

2690
No. 12884

United States
Court of Appeals
For the Ninth Circuit.

CENTRAL FRUIT & VEGETABLE CO., and
WEST TEXAS PRODUCE COMPANY,

Appellants,

vs.

ASSOCIATED FRUIT DISTRIBUTORS OF
CALIFORNIA, RAYMOND M. CRANE,
RED LION PACKING COMPANY and
JOHN C. KAZANJIAN,

Appellees.

Transcript of Record

Appeal from the United States District Court,
Southern District of California,
Central Division.

No. 12884

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

For Appellants:

J. MANUEL HOPPENSTEIN,
HARRY A. PINES,
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Los Angeles 13, Calif.

For Appellees Raymond M. Crane, et al.:

HENRY O. WACKERBARTH,
601 F. P. Fay Bldg.,
Los Angeles 13, Calif.

For Appellees Red Lion Packing Company, et al.:

AYNESWORTH & HAYHURST,
1012-1020 Helm Bldg.,
Fresno, Calif.

In the District Court of the United States for the
Southern District of California, Central Division
No. 8244-PH

CENTRAL FRUIT & VEGETABLE CO. and
WEST TEXAS PRODUCE COMPANY,

Complainants and Appellees,

vs.

ASSOCIATED FRUIT DISTRIBUTORS OF
CALIFORNIA, and RAYMOND M. CRANE,

Respondent and Appellee,

and

RED LION PACKING COMPANY, and JOHN
C. KAZANJIAN,

Respondent and Appellant.

NOTICE OF APPEAL

(From Reparation Order of Secretary of Agriculture.
Perishable Commodities Act of 1930)

To the Secretary of Agriculture, United States
Department of Agriculture, Production and
Marketing Administration; Central Fruit & Vegetable
Company, and West Texas Produce Company,
and to J. Manuel Hoppenstein, their attorney; and
to Raymond M. Crane, doing business as Associated
Fruit Distributors of California, and to Henry O.
Wackerbarth, Esq., his attorney:

You and Each of You Will Please Take Notice that John C. Kazanjian, doing business as Red Lion Fruit Packing Company, being a party adversely affected by the entry of a reparation order by the Secretary of Agriculture, does hereby appeal to the District Court of the United States, for the Southern District of California, Central Division (being the district in which a hearing was held in the above-entitled matter by the Secretary of Agriculture), from [2*] the reparation order entered by the Secretary of Agriculture in that certain proceeding pending before the Secretary of Agriculture, United States Department of Agriculture, Production and Marketing Administration and entitled "Central Fruit & Vegetable Co., and West Texas Produce Company, complainants, vs. Raymond M. Crane, doing business as Associated Fruit Distributors of California, and John C. Kazanjian, doing business as Red Lion Packing Company, respondents, PACA Docket No. 4589" and from the whole of said order; said order being signed and filed under date of April 23, 1948, and ordering appellant herein to pay to Central Fruit & Vegetable Company, the sum of \$6,133.25, with interest thereon at 5% per annum from December 10, 1944, and to pay to West Texas Produce Company the sum of \$10,112.16, with interest thereon at 5% per annum, from December 10, 1944, until paid, and dismissing said complaint and proceeding as to respondent Ray-

*Page numbering appearing at foot of page of original Certified Transcript of Record.

mond M. Crane, doing business as Associated Fruit Distributors of California.

Dated: May 10, 1948.

/s/ JOHN C. KAZANJIAN,
Doing Business as Red Lion
Packing Co., Appellant.

/s/ G. L. AYNESWORTH,

/s/ RALPH MORADIAN,
Attorneys for Appellant.

Affidavit of Service by Mail attached.

[Endorsed]: Filed May 21, 1948. [3]

[Title of District Court and Cause.]

PETITION SETTING FORTH PROCEEDINGS
BEFORE THE SECRETARY OF AGRICULTURE,
AND GROUNDS UPON
WHICH PETITIONER RELIES TO DEFEAT
RIGHT OF COMPLAINANTS TO
RECOVER DAMAGES CLAIMED

(Perishable Agricultural Commodities
Act of 1930)

To: The Honorable Judges of the United States
District Court, for the Southern District of
California, Central Division:

The Petition of John C. Kazanjian, doing business as Red Lion Packing Company, respectfully shows:

1. That petitioner is an individual doing business under the firm name and style of Red Lion Packing Company, having his place of business at Exeter, California, and licensed under the Perishable Agricultural Commodities Act of 1930 as a dealer, commission merchant and/or broker.

2. That during all times herein mentioned, Raymond M. [4] Crane was an individual doing business under the firm name and style of Associated Fruit Distributors of California, having his place of business at Los Angeles, California, and was licensed under the Perishable Agricultural Commodities Act of 1930, as a dealer, commission merchant and/or broker.

3. That complainant, Central Fruit & Vegetable Co., is a copartnership composed of Joe Mosesman, Morris Lipshitz and Sylvia Schwartz, whose post office address is 2009 Cadiz Street, Dallas, Texas. That complainant, West Texas Produce Company, was at all times mentioned herein a partnership consisting of Harry Bockstein, Sam Lipshitz, Solomon Taylor and Leo Lipshitz, whose post office address is 801 Vickery Street, Forth Worth, Texas.

That during all times mentioned herein, the Southwest Brokerage Company, Fruit and Vegetable Division, by Jay Margules, broker, act as broker for complainants.

Proceedings Before Secretary of Agriculture

4. That on October 21, 1944, the complainants herein filed an informal complaint against the re-

spondents, and on January 22, 1946, a formal complaint was filed against both of said respondents before the Regulatory Division of the United States Department of Agriculture.

5. In the formal complaint, it is alleged that the complainants suffered damage in the sum of \$16,575.00 by reason of the failure of respondents to deliver 10 cars of Emperor grapes as agreed on in writing.

6. Copies of said formal complaint were served upon Raymond M. Crane and John C. Kazanjian, and thereafter and within the time allowed by law, answers to said complaint were filed by said respondents.

7. That on April 3, 1946, a report of investigation under the Perishable Agricultural Commodities Act was filed pursuant to Section 47.7 of the Rules of Practice for carrying [5] out the provisions of the Perishable Agricultural Commodities Act. No answers were filed to said report by any of the parties to said proceeding.

8. On January 24, 1947, an order was made designating John S. Griffin as hearing examiner in said proceedings.

9. The depositions of Harry Bockstein and Jay Margules were taken on behalf of complainants and thereafter filed in said proceeding.

10. A hearing on said proceedings was held before John S. Griffin on February 19, 1947, at Los

Angeles, California, at which time complainants appeared by Joe Mosesman, one of the partners, and by Manuel J. Hoppenstein, their attorney; and Raymond M. Crane appeared in person and by his attorney, Henry O. Wackerbarth, and John C. Kazanjian appeared in person, and by his attorneys, G. L. Aynesworth and Ralph Moradian.

11. Thereafter, and on April 23, 1948, Thomas J. Flavin, as Judicial Officer, signed and filed a Preliminary Statement, Findings of Fact, Conclusions and Order in said proceeding, wherein the Secretary of Agriculture ordered said proceeding dismissed as to Raymond M. Crane, doing business as Associated Fruit Distributors, and ordered John C. Kazanjian to pay the reparations hereinabove referred to.

Issues Presented by the Complaint and Answers Thereto

12. The complaint charged that by telegraphic communication, respondents, with Crane acting for himself and as agent for Kazanjian, agreed to sell to complainants ten cars of grapes, to be delivered from storage on December 10, 1944, for an aggregate sales price of \$27,625.00, f.o.b. shipping point, Exeter, California. It is charged that respondents failed to carry out said contract, and failed to deliver said grapes, and that thereby complainants [6] suffered loss and damage in the sum of \$16,575.00, being the difference between the contract price and the market value of the grapes at the time respondents were required to make delivery.

13. Raymond M. Crane in its answer denied that it acted as a principal or an agent for Red Lion in the transaction, and alleged that it contracted to procure grapes for complainants as their agent and was to receive compensation of \$50.00 per carload.

14. John C. Kazanjian in its answer denies that it contracted to sell grapes to complainants as alleged, and denies that Associated (Raymond M. Crane) acted as its agent in negotiating any contract with complainants; he denies that anyone was authorized to issue on behalf of Red Lion the memorandum of sale relied upon by complainants. Kazanjian alleges that if there was any agreement and a breach, complainants' duty was to minimize the damages by making replacements on the open market and the quoted price shortly after the alleged breach was \$3.00 per lug, f.o.b. shipping point.

By way of affirmative defense, Kazanjian alleges there was no signed memorandum pertaining to the alleged contract as required by Sections 1624a and 1724 of the Civil Code of California; that Associated had no authority in writing to enter into a written contract with the complainants or with any other person as agent of Red Lion as required by Section 2309 of the Civil Code of California; and that Red Lion did not receive a copy of the memorandum of sale. Kazanjian demands that complainants be required to elect as to which respondent they will proceed against and prays that the action be dismissed as against Red Lion. Kazanjian denies

that complainants have been damaged in any sum whatsoever, and alleges that complainants have not performed as required of them by the contract, if there is a contract. [7]

Grounds Upon Which John C. Kazanjian Relies to Defeat Right of Complainants to Recover Dam- ages Claimed

The grounds upon which John C. Kazanjian relies to defeat the right of complainants to recover damages claimed, are as follows:

1. That John C. Kazanjian was not a party to any transaction between Raymond M. Crane and the complainants herein, and is not liable for any default, failure or breach on the part of Crane, if there was any default, failure or breach.

2. That Raymond M. Crane was not the agent of the appellant, John C. Kazanjian, in any transaction, and had no authority to act for him, or to negotiate any contracts on his behalf, and that there was no ratification of any contract, or purported contract, entered into by Crane.

3. That the alleged agreement of sale, as evidenced by the standard memorandum of sale, is for the sale of goods, wares and merchandise, not manufactured by the seller especially for the buyer, of a value in excess of \$500.00; that the buyer did not accept and actually receive same or any part thereof, nor give anything in earnest to bind the contract or in part payment thereof, and no note

or memorandum in writing was signed by Raymond M. Crane, or John C. Kazanjian, or by an agent in behalf of either of them, and said memorandum of sale is not enforceable by action under the laws of California, or Texas.

4. That under the terms of said memorandum of sale, no contract was contemplated until a copy of said memorandum had been received by both seller, and buyer; and that if Kazanjian is to be considered as a seller, he received no copy of said memorandum, and had no opportunity to reject the terms thereof, as provided in said memorandum of sale.

5. That complainants failed to minimize damages as required by law. [8]

6. That no agreement was consummated for the sale of grapes between any of the parties to this proceeding.

7. That demand was made upon complainants to elect as to which respondent they would proceed against to judgment, and no election was made, and that by law they are foreclosed from having judgment against respondent for their failure to so elect.

Wherefore, John C. Kazanjian, doing business as Red Lion Packing Company, prays that said proceeding be tried de novo before the above-entitled Court and that upon said retrial the same be dismissed as to him, and for such other and

further relief as may seem just and proper in the premises.

Dated at Fresno, California, this 10th day of May, 1948.

/s/ JOHN C. KAZANJIAN,
Doing Business as Red Lion
Packing Co., Appellant.

/s/ G. L. AYNESWORTH,
/s/ RALPH MORADIAN,
Attorneys for Appellant.

State of California,
County of Fresno—ss.

John C. Kazanjian, being first duly sworn, deposes and says: I am the appellant in the above-entitled proceeding; I have read the foregoing petition and know the contents thereof, and the same is true of my own knowledge.

/s/ JOHN C. KAZANJIAN.

Subscribed and sworn to before me this 10th day of May, 1948.

[Seal] /s/ RALPH MORADIAN,
Notary Public in and for Said
County and State.

Affidavits of Service by Mail attached.

[Endorsed]: Filed May 21, 1948. [9]

LETTER RE PROCEEDINGS
DOCKET No. 4598 PACA

United States Department of Agriculture
Office of the Solicitor
Washington, D. C.

July 26, 1948

Registered Mail

Mr. Edmund L. Smith, Clerk
United States District Court
Southern District of California
Los Angeles 12, California

Dear Mr. Smith:

Subject: Central Fruit and Vegetable Company
and West Texas Produce Company v. As-
sociated Fruit Distributors of California,
and Red Lion Packing Company (PACA
Docket No. 4589)—Civil Action No.
8244-PH

This acknowledges receipt of copies of notice of appeal, petition for appeal, and bond, filed in your court on May 21, 1948, by John C. Kazanjian, doing business as Red Lion Packing Co., through G. L. Aynesworth and Ralph Moradian, attorneys, in the case of Central Fruit and Vegetable Company and West Texas Produce Company v. Associated Fruit Distributors of California, and Red Lion Packing Company (PACA Docket No. 4589), a proceeding under the Perishable Agricultural Commodities Act, 1930, as amended.

In accordance with the requirements of section 7 (c) of the act, there are enclosed copies of the complaint with exhibits Nos. 1 to 6, inclusive, attached; answer of respondent John C. Kazanjian, doing business as Red Lion Packing Company; answer of respondent Raymond M. Crane, doing business as Associated Fruit Distributors of California; and preliminary statement, findings of fact, conclusions, and order, dated April 23, 1948, issued by the Judicial Officer, Mr. Thomas J. Flavin. These copies are certified by the Associate Solicitor.

It will be appreciated if you will send us a copy of the decision in this case, whether reported or unreported, as soon as the case is decided in the District Court.

Very truly yours,

/s/ CLARENCE H. GIRARD,

Chief, Marketing Division.

Enclosures-5

[Endorsed]: Filed July 30, 1948. [10]

PLAINTIFFS' EXHIBIT No. 1

PACA Docket No. 4589a Proceeding Had Under
the Perishable Agricultural Commodities Act

United States of America
Department of Agriculture
8244-PH

July 19, 1948

Pursuant to Title 28, Section 661, U. S. Code
(Section 882, Revised Statutes of the United
States), I hereby certify:

1. That there are now in this Department the
following-described documents:

Complaint in PACA Docket No. 4589 entitled
Central Fruit & Vegetable Company and West
Texas Produce Company, Complainants, v.
Raymond M. Crane dba Associated Fruit Dis-
tributors of California and John C. Kazanjian
dba Red Lion Packing Company, Respond-
ents," with exhibits Nos. 1 to 6, inclusive, at-
tached;

Answer of respondent John C. Kazanjian,
dba Red Lion Packing Company;

Answer of respondent Raymond M. Crane,
dba Associated Fruit Distributors of Cali-
fornia; and

Preliminary Statement, Findings of Fact,
Conclusions, and Order, dated April 23, 1948,
by Thomas J. Flavin, Judicial Officer.

2. That true, correct, and compared copies
thereof are attached hereto.

Plaintiffs' Exhibit No. 1—(Continued)

By direction of the Secretary of Agriculture, and in witness whereof, the said copies are hereby authenticated, the seal of the Department of Agriculture is affixed hereto, and I have signed my name hereto on the day and year first above written.

[Seal] /s/ CHARLES W. BUCY,
Associate Solicitor. [11]

United States of America, Before
The War Food Administrator

P.A.C.A. Docket No. 4589

CENTRAL FRUIT & VEGETABLE COMPANY
AND WEST TEXAS PRODUCE COM-
PANY,

Complainants,

vs.

RAYMOND M. CRANE dba ASSOCIATED
FRUIT DISTRIBUTORS OF CALIFOR-
NIA AND JOHN C. KAZANJIAN dba RED
LION PACKING COMPANY,

Respondents.

COMPLAINT

To the Said Honorable Department:

Come now the complainants and respectfully com-
plaining of the respondents, show the following:

1.

That complainant, Central Fruit and Vegetable

Plaintiffs' Exhibit No. 1—(Continued)

Company, is a partnership composed of Joe Mosesman, Morris Lipshitz and Sylvia Schwartz, dba Central Fruit & Vegetable Company, whose Post Office Address is 2009 Cadiz Street, Dallas, Texas, and that the complainant, West Texas Produce Company, is a partnership composed of Harry Bockstein and Sam Lipshitz, dba West Texas Produce Company, whose Post Office Address is 801 West Vickery, Fort Worth, Texas.

2.

That complainants are informed and believe that respondent, Raymond M. Crane, is an individual dba Associated Fruit Distributors of California, whose Post Office Address is Los Angeles, California, and that the respondent, John C. Kazanjian, is an individual dba Red Lion Packing Company whose Post Office Address is Exeter, California.

3.

That respondents are licensed or subject to the license under the Perishable Agricultural Commodities Act of 1930 as a [12] dealer, commissioned merchant and/or broker, according to complainants information and belief.

4.

On or about October 3, 1944, in the course of interstate commerce, respondents, by contract in writing by telegraph contemplating the shipment of the commodity in interstate commission, contracted to sell to complainants ten carloads of government in-

Plaintiffs' Exhibit No. 1—(Continued)

spected U. S. No. 1 emperor grapes, 28 pounds net, being a perishable agricultural commodity, at the agreed price of \$2.50 f.o.b. plus \$.03½ per lug brokerage to Southwest Brokerage Company; that the standard lug pack per carload is 1,105 lugs, and aggregating a total sales price of \$27,625.00 f.o.b. shipping point, Exeter, California; that California was the shipping point and the final destination was six cars to Fort Worth, Texas, and four cars to Dallas, Texas, being six cars for the complainant, West Texas Produce Company, and four cars for the complainant, Central Fruit & Vegetable Company; that the complainants were also to pay \$50.00 per car buying service for the respondent, Associated Fruit Distributors of California, plus \$.03½ per lug brokerage to Southwest Brokerage Company, Fruit and Vegetable Division, Dallas, Texas; that said delivery to be made by respondent, Red Lion Packing Company, on and after December 10, 1944, with the shipper to place said commodities in storage about October 9, 1944, with the shipper to pay all storage charges; that said contract of sale was confirmed by the respondent, Associated Fruit Distributors of California, on October 2, 1944, by wire addressed to Southwest Brokerage Company as per Exhibit No. 1, attached hereto and made a part hereof; that the memorandum of sale agreement with complainants was dated October 3, 1944, and delivered to complainants by the Southwest Brokerage Company as per Exhibit No. 2, attached hereto and

Plaintiffs' Exhibit No. 1—(Continued)

made a part hereof as though fully incorporated herein.

5.

That said contract was negotiated by Jay Margules dba [13] Southwest Brokerage Company, Fruit and Vegetable Division, a broker, located at Dallas, Texas, who acted in negotiating such purchase as agent for both complainants and respondents and that the respondent, Associated Fruit Distributors of California, was acting for and on behalf of itself and as agent for and on behalf of the respondent, Red Lion Packing Company.

6.

That thereafter respondents failed, neglected and refused to ship from loading point in the State of California in interstate commerce to complainant, Central Fruit and Vegetable Company at Dallas, in the State of Texas, and to the West Texas Produce Company at Fort Worth, in the State of Texas, the ten carloads of emperor grapes called for in said contract and advised and informed the complainants that they would not deliver said grapes for the contract price.

7.

That the matters and action set forth herein constitute a violation by respondents of Section 2 of the Perishable Agricultural Commodities Act of 1930.

8.

That on account of respondents failure to make

Plaintiffs' Exhibit No. 1—(Continued)

delivery of the perishable agricultural commodity above specified in accordance with said contract of sale and purchase, complainants suffered loss and were damaged in the sum of \$16,575.00, being the difference between what said commodity was contracted for and the market value of said commodity at the time respondents were required to make delivery, to-wit, on or about December 10, 1944, and in this connection complainants say that the reasonable cash market value of U. S. No. 1 emperor grapes of the type and kind contracted for was \$4.00 f.o.b. California plus storage; that complainants, acting by and through Joe Mosesman, one of the partners of Central Fruit & Vegetable Company, prior to December 10, 1944, and after notification of the breach by the [14] shippers, made diligent effort to obtain quotations for delivery of the commodity involved for December 10, 1944, but was unable to obtain confirmation for ten cars but only confirmation for one which was shipped by Heggblade-Marguleas Company, San Francisco, California, on January 24, 1945, and consisted of 1,125 lugs at a total cost for the car, exclusive of freight, of \$3,865.00; that in attempting to minimize damage complainant, West Texas Produce Company, on January 14, 1945, purchased 150 lugs of the type of grapes involved in this complaint at \$4.00 per lug on the Dallas market; that again West Texas Produce Company purchased 1,098 lugs of U. S. No. 1 emperor grapes on January 22, 1945, from Zaninovich Brothers, Orange Grove, California, through

Plaintiffs' Exhibit No. 1—(Continued)

C. H. Robinson Company, Brokers, at a price of \$5.00 per lug, delivered at a total cost of \$5,490.00 for the car, the freight being \$518.84; that again on January 19, 1945, West Texas Produce Company purchased from Western Fruit Growers, Inc., one carload of U. S. No. 1 emperor grapes containing 1,105 lugs at \$4.25 per lug, totalling \$4,696.25, the said car being divided 553 lugs to complainant, Central Fruit & Vegetable Company, and 552 lugs to West Texas Produce Company; that again West Texas Produce Company purchased one car of U. S. No. 1 emperor grapes containing 1,100 lugs from Nash DeCamp Company, Berkeley, California, for shipping December 11, 1944, at \$3.50 per lug, aggregating \$3,850.00, plus storage charges of \$156.25, and that, accordingly, in minimizing damages complainants have purchased a total of 4,578 lugs at a total cost of \$18,138.66, exclusive of freight, and that under the contract price the cost of such grapes at \$2.50 per lug would aggregate \$11,445.00, resulting in a net actual loss and damage to complainants of \$6,693.66, being the actual increased cost of the grapes actually purchased to complainants and which loss and damage was actually sustained and being damage other than the difference in value between the contract price and the market price for date of delivery, to-wit, December 10, 1944, and as evidence of the market on or [15] about December 10, 1944, complainants request that judicial notice be taken of the Market News Reports and attach as exhibits and made a part hereof as though

Plaintiffs' Exhibit No. 1—(Continued)

fully incorporated herein Exhibit No. 3, copy of quotation from Associated Fruit Distributors of California by wire, dated December 11, 1944, and Exhibit No. 4, being circular of respondent, Associated Fruit Distributors of California, dated December 9, 1944, and Exhibit No. 5, Western Union wire from Federal State Market News Service to Central Fruit & Vegetable Company, dated December 15, 1944, and Exhibit No. 6, wire from Nash DeCamp Company to C. H. Robinson Company, quoting price of \$4.00 plus storage.

9.

Complainants' Exhibits 1-6, inclusive, are true copies and are attached hereto as a part of this complaint.

Wherefore, complainants pray that a copy of this complaint be served upon the above-named respondents and that they be required to answer the charges herein stated in writing within such time as the Administrator may require; that, upon the records made either with or without formal hearing as provided in the Act or in the regulations and by appropriate order, the complainants be awarded such amount of damages as they may be entitled to receive according to the facts established; and that the Administrator also make such other and further orders and take such disciplinary action contemplated by Section 8 of the Act as may be deemed fit and proper in the premises.

Plaintiffs' Exhibit No. 1—(Continued)

Signed at Dallas, Texas, this 31 day of December, 1945.

WEST TEXAS PRODUCE
COMPANY,

By /s/ HARRY BOCKSTEIN,
Partner,

CENTRAL FRUIT &
VEGETABLE COMPANY,

By /s/ JOE MOSESMAN,
Partner,
Complainants.

/s/ J. MANUEL HOPPENSTEIN,
Counsel for Complainants.

State of Texas,
County of Dallas—ss.

Joe Mosesman, being first duly sworn, says that he has read the foregoing complaint and knows the contents thereof and that the same is true except as to matters therein stated on information and belief and as to such matters he believes it to be true and that he is duly authorized to sign the complaint on behalf of the complainant, Central Fruit and Vegetable Company.

/s/ JOE MOSESMAN.

Plaintiffs' Exhibit No. 1—(Continued)

Subscribed and sworn to before me this 31st day of December, 1945.

[Seal] HAWKINS GOLDEN,
Notary Public, Dallas
County, Texas.

State of Texas,
County of Tarrant—ss.

Harry Bockstein, being first duly sworn, says that he has read the foregoing complaint and knows the contents thereof and that the same is true except as to matter therein stated on information and belief and as to such matters he believes it to be true and that he is duly authorized to sign the complaint on behalf of the complainant, West Texas Produce Company.

/s/ HARRY BOCKSTEIN.

Subscribed and sworn to before me this 31st day of December, 1945.

[Seal] PATSY JENNINGS,
Notary Public, Tarrant
County, Texas.

Plaintiffs' Exhibit No. 1—(Continued)

Exhibit No. 1

Western Union

[Telegram]

Western Union Telegraph Co.

(Copy)

Oct. 2

DJ53 NL PD-WUX Los Angeles, Calif.

Southwest Brokerage Co.

Secured Redlyon Packing Company Confirmation Ten Cars Grapes as Outlined. You Collect Deposits to Be Forwarded to Us Soons Dupja Wired Each Car.

ASSOCIATED FRUIT DISTRS
OF CALIF.

824A

Plaintiffs' Exhibit No. 1—(Continued)

Exhibit No. 2

Southwest Brokerage Co.
Fruit and Vegetable Division
202-4 Produce Exchange Bldg.
Phone R-5144

Standard Memorandum of Sale

Date Ordered: 10/3/44

Lot No. 726 thru 735

Check How Sold:

In Person.....

Telephone Harry Bockstein

Telegram Joe Mosesman

Letter.....

When the terms of sale have been agreed upon the broker shall fill out this Standard Memorandum of Sale in triplicate, sending one copy to the seller, one to the buyer and retaining the third copy for his own file. Unless the seller or the buyer makes immediate objection upon receipt of his copy of this Standard Memorandum of Sale, showing that contract was made contrary to authority given the Broker, he shall be conclusively presumed to agree that the terms of sale as set forth herein are fully and correctly stated.

Date.....19....

City: Dallas, Tex.

Sold to: West Texas Produce Co., Ft. Worth. (6 cars)

Plaintiffs' Exhibit No. 1—(Continued)

Ship to: Central Fruit and Produce, Dallas. (4 cars) Destination

Advise:

Railroad Delivery Preferred:

Positive Routing: SP TP on both buyers.

Sold for account of (Seller) Associated Fruit Dist. of Los Angeles, Calif., (a/c Red Lyon Pkg. Co.)

Shipment from: California.

Time of shipment: See below.

Rolling Car:

Car No. and Initial: Later.

How Shipped or to be Shipped: Std. refgn.

Style of Equipment: Refrigerator Car x Box Car
Ventilated Car Stock Car

Sale made (F. O. B. or Delivered): fob acceptance final,

Terms, How Payable: draft West Texas thru First Nat'l Bank, Ft. Worth.

Special Agreement, if any: draft Central Fruit thru Mercantile Bank, Dallas.

(It is understood, unless otherwise stated herein, this sale is made in contemplation of and subject to the Standard Rules and Definitions of Trade Terms printed on the back hereof.)

Quantity	Commodity and Specifications	Price
Ten (10)	Cars Government Inspected	US#1
Emperor Grapes	28# Net @ 2.50 fob plus 50.00	
buying service for Associated, plus our brokerage		
3½ lug.		

Plaintiffs' Exhibit No. 1—(Continued)

(To go Into Storage, Packing to Commence Rate of One or Two Daily Starting About October 9th. Shipper to Transfer Title on or After December 10th, Shipper Pays all Storage Charges. New Lidded Display Lugs, "Calripe" or Comparable Brand, Partial Payment 1000.00 Per Car to Be Made by Buyers With Government Inspection Report Each Car.)

"Thank You"

SOUTHWEST BROKERAGE
COMPANY, FRUIT & VEG.
DIVN.

/s/ JAY MARGULES,
Broker.

Exhibit No. 3

Associated Fruit Distributors of California
1231 East Seventh Street, 7th and Central Avenue,
Los Angeles 21, California

R. M. Crane, Manager

Representing: Growers, Shippers.

December 9, 1944

Associated Reporting . . .

Navels: Demand exceeds supply. Interesting to note Central California has moved to December 2nd only 7% of their crop, compared to 25% the same date last season. This accounts for the fact that shippers in California have been unable to supply

Plaintiffs' Exhibit No. 1—(Continued)

their customers with Navels for Christmas. Now booking shipments car weekly starting next week for a period of two or three weeks, or for season Tulare County, first grade label, naked pack, natural run of sizes, weather permitting, ceiling price delivered net. Sizes are running heavy 176's to 220's.

Grapefruit: Loading next week about five cars from Phoenix and Yuma districts. Packing under "Valley of the Sun" and "Yumazona" brands. Sizes are running heavy 80's and 70's and some larger. Arrivals indicate fruit to be very nice quality and market remains active at ceiling prices which is \$2.86 f.o.b.

Lemons: Loading next week two or three cars from Riverside district, packing under "Cal-Crest" label, sizes heavy to 360's, 432's, few smaller, some larger. Market still remains active at ceiling prices.

Sweets: Loading from Arizona few cars next week, packing under "Valley of the Sun" brand, sizes running heavy to 220's, 288's, and quality is reported beautiful. Packing these unwrapped, and market is ceiling, which figures the same as the orange ceiling.

Emperors: Can load next week 2-3 cars of U.S. #1 from storage, subject to ability to make grade, \$4.15 f.o.b. net. Terms will be f.o.b. acceptance final.

Tomatoes: Barring any adverse weather, Mexican tomatoes should step up to around fifty cars daily

Plaintiffs' Exhibit No. 1—(Continued)

average, starting the middle of next week. Prices \$4.00 f.o.b. cash, net, all sizes, and anything grading 80% U.S.#1 or better. Sizes running heavy 6x7's.

Cauliflower: Shipments continue light, demand very good, heavy 12's. Los Angeles district \$1.65. Santa Maria district \$1.50 to \$1.60.

Celery: Very little Golden Heart available. This mostly coming from Delta, and ordinary quality, small sizes. Finest celery now offering from Exeter district, Pascal, Howard crates, 16". Heavy 3-3½, \$3.35 f.o.b.

Lettuce: Most all offerings very ordinary, very light weight. Market still at ceiling, demand exceeds supply. Both our Imperial and Blythe deals will get under way around the 20th, with good quality ice pack.

Shafter Longwhite Potatoes: We will be offering futures on this commodity starting from here on. At present growers are asking ceiling which we understand is \$2.93 May 1st to 15th, \$2.83 May 16th to 31st, and \$2.63 during June. This is on Size A, U.S.#1.

Yours very truly,

ASSOCIATED FRUIT DIS-
TRIBUTORS,

R. M. CRANE,

F. C. MORGAN,

C. J. SMITH.

All Quotations Subject to Confirmation

Plaintiffs' Exhibit No. 1—(Continued)

Exhibit No. 4

Western Union

[Telegram]

(Copy)

Los Angeles, Calif., Dec. 11, 1944.

Jimmie Teel

Ft. Worth

Referring to Our Circular of the 9th not Sure
but Think Owner Willing Confirm 4.00 Emperors
Subject Immediate Reply. Offer Subject Packers
Confirmation Crossed Saturday Mexicanita Brand
#2 Mexican Tomatoes 125 6/6 3.50 365 6/7 3.00 160
7/7 2.50 Duty Paid Border FOB Acceptance Final
Duty Crossing Extra 61139.

ASSOCIATED FRUIT DIS-
TRIBUTORS OF CALIF.

Exhibit No. 5

Western Union

[Telegram]

DA35

DD.LB787 DL Collect—San Francisco, Calif. 15
204P

Central Fruit & Veg. Co.

DAL

1944 Dec. 15 P.M. 4:52

No Official Grape FOB Reports Being Issued but
Several Shippers Say Selling USOne Emperors

Plaintiffs' Exhibit No. 1—(Continued)

Around December Tenth 3.75-4.00 Plus Storage and
in Transit Charges Some 4.00 Storage Paid.

FEDERAL STATE MARKET
NEWS SERVICE.

Exhibit No. 6

Western Union

WU J11 NL Pd-Berkeley, Calif., Dec. 17, 1944.

C. H. Robinson Co.

Answering We Made Sale Pep Brand Emperors
on December Thirteenth 4.00 F.O.B. Plus All Stor-
age Charges and Extras Also on December Fifth
and Sixth We Also Made Sales at the Same Price.
No Sales Were Made in Between as We Had Noth-
ing to Sell but if We Had We believe Could Have
Sold at Same Price.

NASH DECAMP COMPANY.

This is original message received over Western
Union printer in our office a.m. 12/18/44

C. H. ROBINSON CO.

/s/ FRANK D. SIMS.

Received Jan 22, 1946 U. S. Dept. of Agriculture.

Plaintiffs' Exhibit No. 1—(Continued)

United States of America
Before The War Food Administration
PACA Docket No. 4589

CENTRAL FRUIT & VEGETABLE COMPANY
AND WEST TEXAS PRODUCE COMPANY,
Complainants,

vs.

RAYMOND M. CRANE dba ASSOCIATED
FRUIT DISTRIBUTORS OF CALIFORNIA
and JOHN C. KAZANJIAN dba RED LION
PACKING COMPANY,

Respondents.

ANSWER OF RESPONDENT
JOHN C. KAZANJIAN

Comes now the respondent John C. Kazanjian, doing business as Red Lion Packing Company, and answering the amended complaint of complainant herein, admits, denies and alleges as follows, to wit:

1. Denies each and every allegation contained in Paragraph 4 of said complaint, and in connection therewith alleges the fact to be that this answering respondent did not, on October 3, 1944, or at any other time, by contract in writing, or otherwise, contemplating the shipment of a commodity in interstate commerce, contract to sell complainants, or either of them, ten carloads of U. S. No. 1 Emperor grapes, 28 pounds net, at an agreed price of \$2.50 f.o.b. plus \$0.31½ per lug brokerage; nor did re-

Plaintiffs' Exhibit No. 1—(Continued)

spondent agree to sell complainants, or either of them, any merchandise, perishable or otherwise, at any time; nor did answering respondent enter into or negotiate any agreement of any kind whatsoever. Answering respondent further denies that the standard lug pack per carload is 1,105 lugs, but states that a carload may consist of as little as 888 lugs of grapes. Answering respondent further states that he knows nothing of, and authorized no one to execute on his behalf, the memorandum of sale agreement attached to the complaint herein.

2. Defendant (answering respondent) denies the allegations contained in Paragraph 5 of said complaint that Jay [23] dba Southwest Brokerage Company, acted as agent in any manner for this respondent in negotiating any purchase or contract, and also denies that the respondent, Associated Fruit Distributors of California, was acting for and on behalf of, or as agent for, the respondent Red Lion Packing Company in any negotiations whatsoever.

3. Answering respondent admits the allegation in Paragraph 6 of said complaint that he failed to make any shipments to the complainants from California to Texas, and states in this connection that he had no contract or obligation of any kind to make delivery of any grapes of any kind to complainants.

4. Answering respondent denies each and every allegation contained in Paragraphs 7 and 8 of said

Plaintiffs' Exhibit No. 1—(Continued)

complaint. In this connection, answering respondent alleges that if complainants were damaged by the failure of any person to deliver grapes according to any agreement, it was their duty to minimize said damages by purchasing similar grapes on the open market at a time when said grapes could be purchased for considerably less than the dates at which purchases were made by complainants as alleged in said complaint. And, further in this connect, answering respondent alleges that at the time, and shortly after the alleged breach set forth in the complaint, No. 1 Emperor grapes were being quoted on the open market at \$3.00 per lug f.o.b.

And by Way of a First Affirmative Defense to Said Amended Complaint, Answering Respondent Alleges:

That the alleged contract upon which the action of the complainants was brought is for the sale of goods for the price of \$500.00 or more, and that the complainant has not accepted or received any part of the said goods, and has not given anything in part payment, and that there is no note or memorandum in writing of the said alleged contract or bargain made and signed by the answering respondent, as required under Sections 1624a and 1724 of the Civil Code of the State of California. [24]

And by Way of a Second Affirmative Defense to Said Complaint, Answering Respondent Alleges:

That respondent Raymond M. Crane, doing busi-

Plaintiffs' Exhibit No. 1—(Continued)

ness as Associated Fruit Distributors of California, had no authority in writing to enter into any alleged written contract with complainants, or any other person, as the agent of the answering respondent, which written authority is required under Section 2309 of the Civil Code of the State of California.

And by Way of a Third Affirmative Defense to Said Complaint, Answering Respondent Alleges:

That answering respondent did not receive any copy of the Standard Memorandum of Sale referred to in complainant's complaint, under the terms of which he, the answering respondent, if deemed to have been the seller, could have made immediate objection that said contract was made contrary to authority, if any, given the broker.

And by way of a Fourth Affirmative Defense to Said Complaint, Answering Respondent Alleges:

That if it be determined that respondent Raymond M. Crane was the agent of the complainant herein, an allegation which this answering respondent denies, the purported agreement entered into by said Raymond M. Crane with the complainants, as evidenced by the said Standard Memorandum of Sale, and subsequent telegraphic communications, said agreement was entered into without any auth-

Plaintiffs' Exhibit No. 1—(Continued)

ority, written or otherwise, from the answering respondent.

And by Way of a Fifth Affirmative Defense to Said Complaint, Answering Respondent Alleges:

That the complainants did not perform, and have not performed, terms of said agreement on their part agreed to be performed, and did not offer or tender to perform or to make payment as in said agreement required of them. [25]

And the Answering Respondent Hereby Demands:

That the complainants in the above-entitled proceeding immediately elect, as between Raymond M. Crane, doing business under the name and style of Associated Fruit Distributors of California, and John C. Kazanjian, doing business as Red Lion Packing Company, against which respondent they will proceed to judgment, if any.

Wherefore, respondent John C. Kazanjian prays that complainants take nothing by reason of their complaint, but that answering respondent be dismissed with his costs.

Signed at Fresno, California, this 27th day of May, 1946.

RALPH MORADIAN,
Attorney for Respondent
John C. Kazanjian.

Received May 31, 1946 U. S. Dept. of Agriculture. [26]

Plaintiffs' Exhibit No. 1—(Continued)

United States of America
Before the Secretary of Agriculture
P. A. C. A. Docket No. 4589

CENTRAL FRUIT & VEGETABLE COMPANY
AND WEST TEXAS PRODUCE COM-
PANY,

Complainants,

vs.

RAYMOND M. CRANE dba ASSOCIATED
FRUIT DISTRIBUTORS OF CALIFORNIA
AND JOHN C. KAZANJIAN dba RED LION
PACKING COMPANY,

Respondents.

ANSWER TO COMPLAINT

Comes now the respondent, Raymond M. Crane
dba Associated Fruit Distributors of California,
who makes the following answer to complaint:

1.

Allegation No. 1 is neither admitted nor denied.

2.

Allegation No. 2 is admitted.

3.

Allegation No. 3 is admitted.

4.

Allegation No. 4 is denied in so far as it applies

Plaintiffs' Exhibit No. 1—(Continued)

to this respondent, in that this respondent contracted to procure for complainants' account rather than to sell to complainants the ten carloads of Emperor grapes, and was to receive compensation of \$50.00 per car from complainants, and that this respondent was acting as agent for complainants and that by reason of this fact this respondent is not properly a party to this complaint.

5.

Allegation No. 5 is denied in that this respondent was not as set forth acting for itself and as agent for Red Lion Packing Company, but on the contrary was acting as agent for complainants.

6.

Allegation No. 6 is denied on behalf of this respondent. [27]

7.

Allegation No. 7 is denied on behalf of this respondent.

8.

Allegation No. 8 is denied on behalf of this respondent.

9.

Allegation No. 9 calls for neither admission nor denial.

It is respectfully submitted on behalf of this respondent that all of the evidence submitted by complainants, together with exhibits attached to and a part of Report of Investigation clearly es-

Plaintiffs' Exhibit No. 1—(Continued)

tablish the fact that this respondent was acting in capacity of procuring agent for complainants and was to be compensated for its services solely by them, with no anticipation of compensation or profit from any other source; this is clearly established by complainants' Exhibit No. 1, being a telegram from this respondent to Southwest Brokerage Company, Dallas, Texas:

“Secured Red Lion Packing Company Confirmation Ten Cars Grapes as Outlined You Collect Deposits to Be Forwarded to Us Soon Dupja (Government Inspection) Wired Each Car.”

Wherefore, this respondent respectfully prays that this complaint be dismissed in so far as it relates to this respondent.

In the event of adverse ruling oral hearing is requested by this respondent.

/s/ RAYMOND M. CRANE,

Associated Fruit Distributors
of California.

State of California,
County of Los Angeles—ss.

Raymond M. Crane, being first duly sworn, says that he has read the foregoing answer to complaint and knows the contents thereof and that the same is true except as to matters stated on information and belief and as to such matters he believes it to

Plaintiffs' Exhibit No. 1—(Continued)

be true and that he is duly authorized to sign this answer to complaint.

/s/ RAYMOND M. CRANE.

Subscribed and sworn to before me this 22nd day of April, 1946.

[Seal] /s/ DEAN KUGLER,
Notary Public.

My Commission expires Oct. 14, 1947.

Received April 20, 1946, U. S. Dept. of Agriculture. [28]

United States Department of Agriculture
Washington, D. C.

Before the Secretary of Agriculture
PACA Docket No. 4589

CENTRAL FRUIT & VEGETABLE COMPANY
and WEST TEXAS PRODUCE COMPANY,
Complainants,

vs.

ASSOCIATED FRUIT DISTRIBUTORS OF
CALIFORNIA and RED LION PACKING
COMPANY,

Respondents.

PRELIMINARY STATEMENT, FINDINGS OF
FACT, CONCLUSIONS, AND ORDER

Preliminary Statement

This is a proceeding for the recovery of reparation under the Perishable Agricultural Commodi-

Plaintiffs' Exhibit No. 1—(Continued)

ties Act, 1930 (7 U.S.C. 1940 ed. 499a, et seq.). On October 21, 1944, an informal complaint was filed against Raymond M. Crane, an individual doing business as Associated Fruit Distributors of California, hereinafter referred to as Associated, and John C. Kazanjian, an individual doing business as Red Lion Packing Company, hereinafter referred to as Red Lion. A formal complaint was filed against both respondents on January 22, 1946. A copy of the formal complaint, together with a copy of the report of investigation, was served upon Associated on April 16 and upon Red Lion on April 18, 1946. Associated [29] filed an answer on April 30, 1946, and on the following day an answer was filed by Red Lion.

It is alleged in the complaint that on or about October 3, 1944, respondents agreed, by telegraphic communications, to sell to complainants ten carloads of U. S. No. 1 Emperor grapes at \$2.50 per lug f.o.b. Exeter, California; that complainants were to pay 3½ cents per lug brokerage to Southwest Brokerage Company and \$50 per car buying service to Associated; that delivery was to be made by Red Lion on or after December 10, 1944; and that the shipper was to place the grapes in storage about October 9 and was to pay all storage charges. It is further alleged that six carloads were purchased for the account of West Texas Produce Company, and four carloads for the account of Central Fruit & Vegetable Company; that the contract was negotiated by J. Margules, doing business at Dallas,

Plaintiffs' Exhibit No. 1—(Continued)

Texas, as Southwest Brokerage Company, who acted as agent for both the complainants and Associated; and that Associated was acting for and on behalf of itself and as the agent of Red Lion. Complainants allege further that respondents failed and refused to ship the 10 carloads of grapes pursuant to the contract, whereupon complainants made diligent efforts to obtain replacements and did replace part at a total cost of \$18,138.66, which was \$6,693.66 in excess of the contract price for that portion. [29A] The total loss claimed is \$16,575. They seek reparation for such amounts as they may be entitled to, based on the facts.

Associated denies in its answer that it acted as a principal or an agent for Red Lion in the transaction. This respondent alleges that it contracted to procure the grapes for complainants as their agent and was to receive compensation of \$50 per carload.

In answer to the formal complaint, Red Lion denies that it contracted to sell grapes to complainants as alleged; that Southwest Brokerage Company or Associated acted as its agent in negotiating any contract with the complainants; or that anyone was authorized to issue on behalf of Red Lion the memorandum of sale relied upon by complainants. Red Lion alleges that if there was any agreement and a breach, complainants' duty was to minimize the damages by making replacements on the open market and the quoted price shortly after the alleged breach was \$3 per lug, f.o.b. shipping point. By way of affirmative defenses, Red Lion alleges that there

Plaintiffs' Exhibit No. 1—(Continued)

was no contract or signed memorandum pertaining to the alleged contract as required by Sections 1624a and 1724 of the Civil Code of California; that Associated had no authority in writing to enter into a written contract with the complainants or with any other person as agent of Red Lion as required by Section 2309 of the Civil Code of California; and that Red Lion [30] did not receive a copy of the memorandum of sale. This respondent demands that complainants be required to elect as to which respondent they will proceed against and prays that the action be dismissed as against Red Lion.

A formal hearing was held at Los Angeles on February 19, 1947, at which all parties were represented.

Associated Fruit Distributors of California is owned and operated by Raymond M. Crane at Los Angeles, California. He is a broker and distributor of produce. Red Lion Packing Company is the trade name of John C. Kazanjian, who owns vineyards and a packing house at or near Visalia, California. In telephone conversations beginning in September, 1944, and extending to October 3, 1944, Associated and Red Lion discussed the selling of grapes for Red Lion. On September 26, 1944, Crane sent telegrams to 13 brokerage concerns in the United States relating to the purchase of grapes. One recipient was Southwest Brokerage Company and that telegram reads, in part, as follows:

“Can Book Emperors Nine Cars Usone Nine
Cars Unclassified or 18 Cars Vineyard-Run

Plaintiffs' Exhibit No. 1—(Continued)

Grade to Go Into Storage Packing to Commerce
Rate of One or Two Daily October 9th We to
Personally Inspect AFOHD [shipping point
acceptance final] Basis Our Inspection Shipper
to Transfer Title on or After December 10th
He Paying All Storage Charges. Packed 28#
Net Display New Lugs Lidded Calripe or Com-
parable Brand 500.00 Part Payment With
Confirmation Price 2.53 Net to Shipper Which
Ceiling That Time We Charging 50.00 Car
Procurement Charge ADLAM [offer subject to
confirmation] CORLU [wire immediately must
have answer by] Thursday." [31]

This was followed by telegrams on October 2 to
the same brokerage concerns, including Southwest
Brokerage Company, as follows:

"CPFGD [referring our night letter 26th]
Quoting Futures Emperors Secured Revised
Deal Fifteen Cars Usone 2.50 Net Same Deal
CORSD [wire quick if wanted] Any Part."

On October 2 Southwest Brokerage Company sent
a message to Associated by teletype:

"Refg That 6 Emps Ftw and 4 Dallas Deal
OK 2.50 Net 5. 50.00 for U if Legal. Presume
Its Legal or U Wouldnt Offer It. Advise."

Associated replied:

"Hvnt Bn Able Contact the Shpr Yet But
Sure Its Okay. Wl Wire U Def One Way or
Other Sons Get Him. Yes It Is Legal Natu-

Plaintiffs' Exhibit No. 1—(Continued)
 rally a Receiver Can Pay His Whole Markup
 for Buying Brokg if He Wants to Wl Wire
 U Soons Rec Def Conf. Undertnd Its Basis
 1000.00 Dep Against Each Usone Inspn as
 They R Loaded. What Else New."

Southwest Brokerage Company answered:

"Fars I Kno That Covers It. Try Wire Nite
 Sure Thx End."

At 5:25 p.m., October 2, Associated sent the following telegram to Southwest Brokerage Company:

"Secured RedLyon Packing Company Confirmation Ten Cars Grapes as Outlined You Collect Deposits to Be Forwarded to Us Soons DUPJA [Government inspection] Wired Each Car." [32]

The only written matter exchanged between Associated and Red Lion consists of two telegrams. The first telegram, dated October 3, 1944, and addressed to Red Lion, is as follows:

"Referring Telephone Have Sold for Your Account Basis 2.50 Lug Net to You Block Emperors Mentioned Five Cars Basis 750.00 Car Deposit Ten Cars Basis 1000.00 Deposit to Be Paid Upon Receipt Usone Government Inspections Now Depending You Handle Through Us Balance Cars You Mentioned for Fresh Shipment Advise When Expect Ship These Believe We Could Place Them Now Ceiling Pricdxxx Price With Deposits Selling Basis Ability Make Usone Grade Suggest Give Us

Plaintiffs' Exhibit No. 1—(Continued)

Approximate Shipping Dates Mays Well Get
Cleaned Up Since Ceiling Precludes Any Possi-
bility Higher Market Time of Shipment Will
Forward Confirmation for Your Signature
Soons Receive Airmail From Buyers."

On October 4, 1944, Red Lion sent the following
reply:

"Fifteen Cars Storage U S One Emperors
December Tenth Conversion Satisfactory at
Two Dollars and Fifty Cents FOB Exeter
Guaranty by Buyer. One Thousand Dollars
Deposit on 10 Cars and Seven Hundred Fifty
Dollars on Five Cars Said Deposit to Be Paid
Immediately on Inspection at Shipping Point.
You to Arrange for Storage as Agreed. Bal-
ance of Pack Intend to Load After Oct Twen-
tieth Will Be Glad to Make Deal on Same
About the 15th of Oct."

Joe Mosesman, who was at the time of the alleged
agreement a partner in Central Fruit & Vegetable
Company, testified in part that he was contacted by
Margules of Southwest Brokerage Company and
informed that telegrams had been received from
Associated offering grapes for sale. The witness
stated further that he agreed to buy four carloads
for his company and, under proper authority, six
carloads for West Texas Produce Company. He
states that on October 2 he knew that Red Lion was
the seller. [33]

The deposition of Margules was placed in the

Plaintiffs' Exhibit No. 1—(Continued)

record by complainants. He acknowledged the telegrams and teletype messages exchanged with Associated. The witness testified that he dealt entirely with Crane of Associated and he did not know Red Lion and had no previous business dealings with that concern. He testified further that all of the shipper's specifications were met, and a standard broker's memorandum of sale was prepared and copies were forwarded to Associated, Mosesman, and Harry Bockstein, a partner in West Texas Produce Company. The memorandum, dated October 3, 1944, shows the name of the seller as "Associated Fruit Dist. of Los Angeles, Calif. (a/c Red Lyon Pkg. Co.)." According to Margules, he learned on October 10 that the ceiling price on grapes had been removed by the Office of Price Administration; that he telegraphed Associated asking if some cars of grapes could be shipped at once; and that Associated replied that Red Lion considered that: "Account Ceiling Lifted Any Contracts Emperors Voided; Willing Go Along Give You Trade Preference Shipping as Packed at Market Price Which Today 3.25 F.O.B. Acceptance. Advise." On October 12 Associated notified Margules by telegraph that Red Lion as a final gesture would ship the grapes at \$3 f.o.b., but would not guarantee U.S. No. 1 on arrival, and on October 16 Associated notified him that Red Lion was [34] unwilling to abide by the terms of the original contract and complainants should take whatever action they felt advisable.

Plaintiffs' Exhibit No. 1—(Continued)

Findings of Fact

1. The complainant, Central Fruit & Vegetable Company, at all times pertinent hereto was a partnership composed of Joe Mosesman, Morris Lipshitz, and Sylvia Schwartz, whose post office address is 2009 Cadiz Street, Dallas, Texas.

2. Complainant, West Texas Produce Company, was at all times pertinent hereto a partnership consisting of Harry Bockstein, Sam Lipshitz, Solomon Taylor, and Leo Lipshitz, whose post office address is 801 Vickery Street, Fort Worth, Texas.

3. Respondent, Raymond M. Crane, is an individual doing business as Associated Fruit Distributors of California, whose post office address is 1231 East Seventh Street, Los Angeles, California. Respondent, John C. Kazanjian, is an individual doing business as Red Lion Packing Company, whose post office address is 125 South G Street, Exeter, California. At the time of the transactions involved in this proceeding, both respondents were licensed under the act.

4. At 9:10 a.m., on October 2, 1944, Associated sent a telegram, on behalf of Red Lion, to 13 brokerage concerns, including [35] Southwest Brokerage Company, Dallas, Texas, referring to a prior communication of September 26, 1944, and quoting 15 carloads of U.S. No. 1 Emperor grapes at \$2.50 per lug net, subject to the shipper's confirmation.

5. On or about October 2, 1944, Red Lion orally

Plaintiffs' Exhibit No. 1—(Continued)

authorized Associated to confirm the sale of 10 of the 15 carloads to complainants—6 to West Texas Produce Company, 4 to Central Fruit & Vegetable Company. It was understood and agreed that the grapes were to be U.S. No. 1 grade, 28 pounds net in new lidded display lugs, "Calripe" or other comparable brand; that the price was \$2.50 per lug f.o.b. acceptance final; that the grapes were to go into storage with packing to commerce at the rate of one to two carloads daily starting October 9; and that Red Lion was to transfer title on or after December 10, and was to pay all storage charges. It was agreed further that Government inspection reports as to grade would be wired on each car and upon their receipt complainants would make a deposit of \$1,000 per carload. Complainants agreed to pay 3½ cents per lug brokerage to Southwest Brokerage Company and \$50 per car to Associated for its services in procuring the grapes.

6. On October 3 Associated notified Red Lion by telegram that the sales of the 10 carloads of grapes here involved had [36] been completed, and the following day Red Lion replied by telegram that this was satisfactory.

7. On October 10, 1944, Southwest Brokerage Company wired Associated requesting shipment of some of the 10 cars of grapes immediately instead of placing them in storage, to which Associated replied that "Red Lion Takes View Account Ceiling Lifted Any Contracts Emperors Voided."

Plaintiffs' Exhibit No. 1—(Continued)

8. On October 16, 1944, Associated advised Southwest Brokerage by wire that Red Lion was unwilling to abide by any sales made where the ceiling price was a definite consideration; that the crop was short; that they were not packing U.S. No. 1 grapes, and that this appeared to be a case for the courts to decide, with the further suggestion that complainants take such action as they deemed advisable.

9. Complainants made a diligent effort to secure replacements of grapes after being informed that Red Lion would not ship or store the grapes as provided in their agreement. A total of 4,428 lugs were purchased at prices totaling \$17,382.41 f.o.b. shipping points. This was \$6,312.41 more than the cost of the same number of lugs at the contract price of \$2.50 per lug. The number of lugs of grapes purchased by each complainant, including the price and approximate dates, were as [37] follows:

Central Fruit

Date	Number	Price
10/24/44	1,125	\$3,865.00
1/15/45	553	2,350.25

West Texas Produce

Date	Number	Price
10/31/44	1,100	\$3,850.00
1/15/45	552	2,346.00
1/22/45	1,098	4,971.16

Plaintiffs' Exhibit No. 1—(Continued)

10. The agreement entered into between Red Lion and complainants contemplated the delivery of 10 cars of grapes, consisting of 11,050 lugs, based on the standard carload of 1,105 lugs to the car. At the contract price of \$2.50 per lug, the total cost would have been \$27,625. The number of lugs covered by the contract exceeded by 6,622 the number of lugs which complainants were able to replace.

11. The fair market price of U.S. No. 1 Emperor grapes on or about December 10, 1944, at Exeter, California, was \$4 per lug. The market value of the 6,622 lugs of grapes not replaced exceeded the contract price by \$9,933.

12. Informal complaint was filed in this proceeding on October 21, 1944, which was within nine months after the cause of action accrued, and was followed by the filing of a formal complaint on January 22, 1946.

Conclusions

In this proceeding much discussion was devoted to the question whether Associated was the agent of Red Lion or of complainants. [38] The evidence demonstrated that Associated, with the knowledge and consent of Red Lion, attempted to find purchasers of 15 carloads of grapes and Associated did find that complainants were willing to purchase 10 carloads. At the oral hearing Kazanjian testified that most of his grapes were handled by Crane during the 1944-45 season and also the previous year. Before the advent of Federal ceiling prices on table grapes and after their removal on October 10, 1944,

Plaintiffs' Exhibit No. 1—(Continued)

an intermediary or broker received brokerage from the seller and Kazanjian paid brokerage to Crane. During the period of ceiling prices, however, the general practice was for buyers to pay the brokerage. As to the instant transaction, Kazanjian stated that three or four weeks prior to October 3, 1944, Crane called Kazanjian and asked if he was going to put any grapes in storage and the latter said he would be interested if Crane could work out a storage deal. Thereafter Crane talked with Kazanjian almost daily concerning the matter and Kazanjian was visited regularly by Hoover, Crane's representative. Kazanjian admits that Crane told him in these conversations that he had located storage facilities and had also found buyers willing to pay the price, which was the ceiling, and assume the risk of storage. Kazanjian understood that one transaction was for 10 carloads with a deposit of \$1,000 per car to be made upon the receipt of the results of Federal inspections, but Crane did not mention the names of the buyers. [39]

The ordinary function of a broker is to handle negotiations between contracting parties. Although a broker may be initially the limited agent of one party, he becomes the agent also of the other party when permitted to transmit offers or counter-offers for them. *Vahlsing v. Rothstein*, 107 Pa. Sup. 281, 163 Atl. 350 (1932). The fact that one of the parties is to pay the broker's commission does not necessarily mean that the broker acts solely as agent for that party. *Harcourt-Greene Co. v. Pennsylvania*

Plaintiffs' Exhibit No. 1—(Continued)

Marconi Co., 6 A.D. 257 (PACA Docket No. 4523, S. 3356).

The most important and perhaps the only real issue here is whether a contract was made which is enforceable under the California Statute of Frauds. Respondent contends in its brief that Associated had no authority to bind Red Lion by any agreement in writing and that there is no memorandum of the agreement signed by Red Lion. In respect to these matters, Red Lion refers to the California statutes. Sections 1624(a) and 1724 of the California Civil Code and Section 1973(a) of the California Code of Civil Procedure are the same and read as follows: "A contract to sell or a sale of any goods or choses in action of the value of five hundred dollars or upwards shall not be enforceable by action unless * * * some note or memorandum in writing of the contract or sale be signed by the party to be charged or his agent in that behalf." Section 2309 of the California Civil Code provides: "* * * authority to [40] enter into a contract required by law to be in writing can only be given by an instrument in writing."

Unquestionably, a memorandum of sale under the statutes is valid and enforceable only when it is in writing and there is a sufficient description of the thing sold, the price to be paid, and the names of the party selling and the party buying. The statutes do not require, however, a formal contract drawn up with technical exactness and the memorandum need not be found in one paper, but may consist of

Plaintiffs' Exhibit No. 1—(Continued)

a number of documents, including telegrams and letters. *O'Donnell v. Lutter*, 68 Cal. App. 376, 156 P. 2d 958 (1945); *Simmons v. Birge Co.*, 52 F. Supp. 629 (S.D. Calif., 1943). In *Brewer v. Horst-Lachmund Co.*, 127 Cal. 643, 60 Pac. 418 (1900), it was stated that: “* * * the court is permitted to interpret the memorandum by the light of all the circumstances under which it was made; and if, when the court is put into possession of all the knowledge which the parties to the transaction had at the time, it can be plainly seen from the memorandum who the parties to the contract were, what the subject of the contract was, and what were its terms, then the court should not hesitate to hold the memorandum sufficient.” *Gibson v. De La Salle Institute*, 66 Cal. App. 2d 609, 152 P. 2d 774 [41] (1944).

The telegrams and teletype messages exchanged between Associated and Southwest Brokerage Company clearly show that a contract was entered into between Red Lion and complainants. Although the complainants were not specifically named therein, the evidence is that the letters “FW” and “Dallas” designated them. Furthermore, a memorandum of sale containing the names of the contracting parties was drawn up by Southwest Brokerage Company and forwarded to Associated, and it may be considered a part of the memorandum of the agreement. From these integrated papers appear every essential element of a memorandum to satisfy the requirements of the statutes. *Kelley-Clarke Co. v. Leslie*, 61 Cal. App. 559, 215 Pac. 699 (1923).

Plaintiffs' Exhibit No. 1—(Continued)

It is conceded that Red Lion did not sign any of the foregoing documents constituting the memorandum of the agreement and the authority of Associated to send the confirming telegram is not in writing. Crane testified, by deposition, that he received authority from Kazanjian over the telephone to confirm the sale to complainants. Complainants urge that Red Lion recognized Associated's authority by ratification, referring to the telegram sent by Red Lion to Associated on October 4, 1944. As to the ratification of an agent's authority, the California Supreme Court stated in *Ballard v. Nye*, 138 Cal. 588, 72 Pac. 156 (1903) that: [42]

“Of course authority must be shown, but it need not be express authority; it may be implied and one of the recognized legal methods of proving authority is by ratification. From such proofs the law implies previous authority to the same extent as if in the first instance it had been expressly conferred. The doctrine of ratification proceeds upon the theory that there was no previous authority, and that the relation of principal and agent did not in fact exist, but implies it from the acts and conduct of the parties, and when so implied, is equivalent to previous authority, and results as effectively to establish the relations of principal and agent as if the agency had been authorized in the beginning.”

In *Dunbar v. Farnum*, 109 Vt. 313, 196 Atl. 237, 114 A.L.R. 996 (1937), the court said: “Such a rati-

Plaintiffs' Exhibit No. 1—(Continued)

fication need not be a formal document. It need not be addressed or delivered to the other party to the contract. If it recognizes the existence of the contract and either expressly or impliedly approves it, the Statute of Frauds is satisfied." And in *Central Sav. Bank of Oakland v. Coulter*, 72 Cal. App. 78, 236 Pac. 956 (1925), the court stated: "In all such cases where the agency is shown to exist, the rule is that the writings showing ratification will be liberally construed."

On October 3 Associated notified Red Lion that 15 carloads of grapes had been sold and mentioned a previous telephone conversation between them. In a reply telegram, Red Lion stated that the matter was satisfactory, referring to the 10 carloads on which [43] deposits of \$1,000 were to be made. Kazanjian admits that he sent this telegram and that he intended that Crane should rely thereupon. This exchange of telegrams constituted a ratification by Red Lion of the sale of the 10 carloads of grapes to complainants. *Kelley-Clarke Co. v. Leslie*, supra; *O'Donnell v. Lutter*, supra; cf. *E. K. Wood Lumber Co. v. Moore Mill & Lumber Co.*, 97 F. 2d 402 (C.C.A. 9th, 1938). This conclusion is substantiated to a slight extent by the conduct of the parties after the removal of the ceiling prices. In the telegram dated October 10, Associated told Southwest Brokerage Company that "Shipper RedLion Takes View Account Ceiling Lifted Any Contracts Emperors Voided"; not that Red Lion considered no contracts had been consummated.

Plaintiffs' Exhibit No. 1—(Continued)

Red Lion contends further that its telegram of October 4 could not have been a ratification because a copy of the broker's memorandum of sale issued by Southwest Brokerage Company was not sent to Red Lion, although it contains the purported terms, and there are variances between Red Lion's telegram and this memorandum. This argument must fail because it is based upon the theory that the broker's memorandum is the only evidence of a memorandum available under the statutes. As we have seen, however, the statutory memorandum is considered to consist of the telegrams and other documents. The California statutes do not require that any particular [44] form of memorandum be used. Likewise the statutes do not require that the memorandum be delivered and the weight of authority is that a delivery is unnecessary. 145 A.L.R. 1014.

The following conclusions are warranted by the evidence in the record: Prior to October 2, 1944, Kazanjian knew that Crane was negotiating to find purchasers for 10 carloads of grapes to be stored by Kazanjian; on or about October 2, 1944, Kazanjian was notified orally by Crane that purchasers for the grapes had been found who would contract on terms satisfactory to Kazanjian and the latter orally authorized Crane to confirm the contract of purchase and sale; there was a memorandum of sale signed by Associated on behalf of Red Lion which is sufficient to satisfy the California Statutes of Fraud; the authority vested in Crane to confirm

Plaintiffs' Exhibit No. 1—(Continued)

the sale was subsequently ratified by Red Lion in writing; valid and enforceable contracts were made between Red Lion and complainants; and Red Lion's refusal to ship the 10 carloads of grapes to complainants pursuant to such contracts was in breach thereof.

Respondent Red Lion places considerable emphasis upon the decision in *Joseph Denunzio Fruit Company v. Associated Fruit Distributors of California and Red Lion Packing Company*, 6 A.D. 139 (PACA Docket No. 4532, S. 3336). Without going into a detailed analysis of that case in relation to the facts here [45] presented, it is sufficient to say that there are material differences in the two cases, and the Denunzio decision is not decisive of the issues presented in this proceeding.

Subdivision (2) of Section 1787 of the California Civil Code [Uniform Sales Act, Section 67(2)] provides that the measure of damages in case of wrongful refusal to deliver goods "is the loss directly and naturally resulting in the ordinary course of events, from the seller's breach of contract." Ordinarily, the rule of damages is the difference between the price agreed to be paid and the market value at the time or times when the goods ought to have been delivered, because the vendee can obtain the goods contracted for at the market price. *Bercut v. Park, Benziger & Co.*, 150 F. 2d 731 (C.C.A. 9th, 1945); *S. Botner & Sons, et al. v. The Login Corp.*, 6 A.D. 567 (PACA Docket Nos. 4503 and 4504, S. 3383).

Plaintiffs' Exhibit No. 1—(Continued)

Complainants were first informed on October 16, 1944, that no grapes would be shipped to them under the contracts herein, which provided for delivery on or after December 10, 1944. The evidence shows that complainants were diligent in their efforts to replace the 10 carloads of grapes after receiving notice that the grapes would not be stored or shipped. The first purchase was made on or about October 24, 1944, when 1,125 lugs of grapes [46] were purchased by Central Fruit & Vegetable Company for delivery December 11, 1944. Altogether a total of 4,428 lugs were purchased by complainants from outside sources of supply. This figure does not include a purchase by West Texas Produce Company from Central Fruit of 150 lugs at a cost of \$600. The notation of this purchase which was submitted in evidence fails to show whether the price was f.o.b. or delivered and, in addition, these lugs appear to have been a portion of the 1,125 lugs purchased by Central Fruit on October 24, 1944, at \$3.25 per lug f.o.b.

There is testimony to the effect that a standard car consists of about 1,105 lugs of grapes. This is denied by Red Lion, who claims that a carload of grapes may consist of as little as 888 lugs. The four cars of grapes that were purchased by complainants averaged 1,107 lugs. An average of 1,105 lugs per car, therefore, appears to be a reasonable figure to use in computing the extent of complainants' damages. Based on this figure the contracts entered into between complainants and Red Lion cover 11,050

Plaintiffs' Exhibit No. 1—(Continued)

lugs of grapes, 4,420 by Central Fruit and 6,630 by West Texas.

Reports of the Market-News Service for November 10, 1944, of which we take official notice, state no further reports would be made on grapes in California since the grape season was practically over at that time. Several witnesses testified with reference to [47] the market price of U. S. No. 1 Emperor grapes on or about December 10, 1944. The price ranged from \$4 per lug to \$5.50 per lug. It was Crane's opinion that the fair market price on or about December 10, 1944, would be around \$4 per lug. Associated published a bulletin on December 9, 1944, which was circulated to the fruit and vegetable trade throughout the country, quoting among other items a market price of \$4.15 f.o.b. net per lug for U. S. No. 1 Emperor grapes. It is concluded, therefore, that the fair market price of U. S. No. 1 Emperor grapes on December 10, 1944, the delivery date in the contract between Red Lion and complainants, was approximately \$4 per lug, f.o.b. California.

Central Fruit contracted to purchase from Red Lion four carloads, or 4,420 lugs, of grapes, none of which was delivered. This complainant made replacement purchases of 1,678 lugs at a cost of \$6,215.25, which was \$2,020.25 in excess of the contract price. The value of the 2,742 lugs not replaced, based upon market value of \$4 per lug, was \$4,113 in excess of the contract price. Central Fruit's total damages resulting from Red Lion's failure to de-

Plaintiffs' Exhibit No. 1—(Continued)

liver thus amounted to \$6,133.25 (\$2,020.25 plus \$4,113).

The number of lugs to be delivered by Red Lion to West Texas Produce was 6,630, none of which was delivered. Replacement purchases totaled 2,750 lugs at a cost of \$11,167.16, which was [48] \$4,292.16 in excess of the contract price. The value of the 3,880 lugs not replaced was \$15,520, which was \$5,820 in excess of the contract price. West Texas Produce thus sustained total damages in the amount of \$10,112.16 (\$4,292.16 plus \$5,820).

It is concluded that the failure of John C. Kazanjian, doing business as Red Lion Packing Company, to deliver the 10 carloads of grapes to complainants was without reasonable cause and in violation of Section 2 of the act, for which reparation should be awarded to Central Fruit & Vegetable Company in the amount of \$6,133.25, with interest, and to West Texas Produce Company in the amount of \$10,112.16, with interest, and the facts should be published. The complaint filed against Raymond M. Crane, doing business as Associated Fruit Distributors of California, should be dismissed.

Associated and Southwest Brokerage Company appear to have fully performed the duties required of them by complainants in effecting the purchase from Red Lion. When complainants are indemnified for the breach of Red Lion, they will be obligated to pay Associated and Southwest Brokerage Company for services rendered at the rates agreed [49] upon.

Plaintiffs' Exhibit No. 1—(Continued)

Order

Within 30 days from the date of this decision, John C. Kazanjian, doing business as Red Lion Packing Company, shall pay to complainant Central Fruit & Vegetable Company, as reparation, the sum of \$6,133.25, and shall pay to complainant West Texas Produce Company, as reparation, the sum of \$10,112.16, with interest on each amount awarded at the rate of 5 per cent per annum from December 10, 1944, until paid.

The complaint against Raymond M. Crane, doing business as Associated Fruit Distributors of California, is hereby dismissed.

The facts as set forth herein shall be published.

Copies hereof shall be served on the parties by registered mail, or in person, and, except as to the date of payment of reparation and as to service on the parties, this order shall become effective 20 days after its date.

Done at Washington, D. C., this 23rd day of April, 1948.

Secretary's File Room

/s/ THOMAS J. FLAVEN,
Judicial Officer.

[Endorsed]: Filed July 30, 1948, U. S. District Court.

Admitted in evidence (Plaintiffs' Exhibit No. 1 in case No. 8244, U. S. District Court) July 11, [50] 1950.

[Title of District Court and Cause.]

AMENDED ANSWER OF RESPONDENT AND
APPELLEE RAYMOND M. CRANE, DO-
ING BUSINESS AS ASSOCIATED FRUIT
DISTRIBUTORS OF CALIFORNIA

Leave of Court being first had and obtained or counsel for complainants and appellants having stipulated to the filing of this amended answer, respondent and appellant Raymond M. Crane, doing business as Associated Fruit Distributors of California, files this, his amended answer to the complaint of complainants on file herein, admitting, denying and alleging as follows:

I.

Answering the allegations contained in Paragraphs 1, 2 and 3 of [52] said complaint, this answering respondent admits the allegations contained therein.

II.

Answering the allegations contained in Paragraphs 4, 5, 6, 7 and 8 of said complaint, this answering respondent denies, generally and specifically, each and every allegation contained therein except as such allegations may hereinafter be admitted.

Wherefore, this answering respondent prays judgment, etc.

And as a Second, Separate and Distinct Defense to the Cause of Action Set Forth in the Complaint of Complainants and Appellees, This Answering Respondent and Appellee Alleges:

I.

That in connection with the transactions alleged in Paragraphs 4, 5, 6, 7 and 8 of said complaint, this answering respondent alleges that he did not act as the principal or seller, or as an agent for the principal or seller, but that on the contrary he was the procuring broker or buying agent for the complainants, and that said complainants agreed to pay this answering respondent the sum of \$50.00 per car as a procurement charge or buying brokerage, and that in said transactions the respondent John C. Kazanjian, doing business as Red Lion Packing Company, was the principal or seller.

Wherefore, this answering respondent prays judgment, etc. [53]

And as a Third, Separate and Distinct Defense to the Cause of Action Set Forth in the Complaint of Complainants and Appellees, This Answering Respondent Alleges:

I.

That in connection with the transactions alleged in Paragraphs 4, 5, 6, 7 and 8 of said complaint, this answering respondent alleges that he submitted to the respondent John C. Kazanjian, doing business as Red Lion Packing Company, the offer of

complainants to purchase said 10 cars of Emperor grapes, and the said respondent John C. Kazanjian accepted said offer and thereafter ratified in writing the sale of 10 cars of Emperor grapes to complainants.

Wherefore, this answering respondent prays judgment, etc.

And as a Fourth, Separate and Distinct Defense to the Cause of Action Set Forth in the Complaint of Complainants and Appellees, This Answering Respondent Alleges:

I.

That in connection with the transactions alleged in Paragraphs 4, 5, 6, 7 and 8 of said complaint, this answering respondent alleges that the terms of the contract for the purchase of 10 cars of Emperor grapes were never definitely agreed upon.

Wherefore, this answering respondent prays judgment, etc. [54]

And as a Fifth, Separate and Distinct Defense to the Cause of Action Set Forth in the Complaint of Complainants and Appellees, This Answering Respondent Alleges:

I.

That the transactions alleged in Paragraphs 4, 5, 6, 7 and 8 of said complaint were for the purchase of 10 cars of Emperor grapes at a purchase price in excess of \$500.00; that said alleged agreement,

if any, was consummated in the State of California; that the buyer did not, at any time, accept and receive all or any part of said grapes; that no payment was made in earnest or to bind said agreement of purchase, and no part payment was made on account of the purchase price of said grapes, and no note or memorandum in writing was made of said contract of sale and signed by the party to be charged or his agent in that behalf, and said alleged agreement of sale of 10 cars of Emperor grapes was unenforceable under the provisions of Section 1624a of the Civil Code of California.

Wherefore, this answering respondent prays judgment, etc.

And as a Sixth, Separate and Distinct Defense to the Cause of Action Set Forth in the Complaint of Complainants and Appellees, This Answering Respondent Alleges:

I.

That the agreement for the purchase of 10 cars of Emperor grapes alleged in Paragraphs 4, 5, 6, 7 and 8 of said complaint, was at a purchase price in excess of \$2.50 a lug, and said alleged agreement of purchase was therefore at a price in excess of the ceiling price of \$2.50 per lug established by the Office of Price Administration pursuant to the provisions of the Emergency Price Control Act of 1942 as amended, and said alleged agreement for the purchase of 10 [55] cars of Emperor grapes was therefore illegal and void.

II.

That this defense is presented upon the assumption that in the transactions alleged in Paragraphs 4, 5, 6, 7 and 8 of said complaint this answering respondent was acting either as the principal or as the agent for the respondent John C. Kazanjian, doing business as Red Lion Packing Company, and upon the further assumption that an agreement of purchase and sale was entered into by the complainants as purchaser and by this respondent as principal or by respondent John C. Kazanjian as principal, and this defense is presented without prejudice to the contention urged in other defenses herein to the effect that in said transactions this answering respondent was acting as the procuring broker or buying agent for the complainants.

Wherefore, this answering respondent prays judgment that the complainants take no relief under the cause of action set forth in said complaint, and that this answering respondent have judgment for his costs and disbursements herein incurred.

/s/ HENRY O. WACKERBARTH,
Attorney for Respondent, Raymond M. Crane, Do-
ing Business as Associated Fruit Distributors.

State of California,
County of Los Angeles—ss.

Raymond M. Crane, being first duly sworn, deposes and says: I am one of the respondents in the above-entitled action and I have read the foregoing

Amended Answer and know the contents thereof and the same is true of my own knowledge.

/s/ RAYMOND M. CRANE.

Subscribed and sworn to before me this 18th day of September, 1949.

[Seal] /s/ DOROTHY WALD FIERRO,
Notary Public in and for
Said County and State.

My commission expires June 28, 1953.

[Endorsed]: Filed Oct. 25, 1949.

[Title of District Court and Cause.]

PROPOSED FINDINGS OF FACT AND
CONCLUSIONS OF LAW

The above-entitled action came on regularly for trial on the 11th day of July, 1950, before the above-entitled Court, in courtroom No. 3 thereof, Hon. Peirson M. Hall, Judge presiding, the complainant and appellee, West Texas Produce Company, appearing by Harry Bockstein, one of the partners, and both complainants and appellees appearing by J. Manuel Hoppenstein, of Dallas, Texas, and Harry A. Pines, of Los Angeles, California; the respondent and appellee, Raymond M. Crane, doing business as Associated Fruit Distributors of California, appearing in person and by Henry O. [166] Wackerbarth, his attorney, and the respondent and appellant,

John C. Kazanjian, doing business as Red Lion Packing Company, appearing in person and by Messrs. G. L. Aynesworth and L. Nelson Hayhurst, his attorneys; and said action proceeded to trial upon (1) the complaint of the complainants originally filed before the War Food Administrator of the United States of America; (2) the answer of the respondent, John C. Kazanjian, doing business as Red Lion Packing Company, originally filed before the War Food Administrator of the United States of America; and (3) the amended answer of respondent and appellee, Raymond M. Crane, doing business as Associated Fruit Distributors of California, filed in the above-entitled Court. Thereupon, evidence both oral and documentary was introduced on behalf of the respective parties, and the evidence being closed, the cause was submitted to the Court for its consideration and decision, and after due deliberation thereon the Court, being fully advised in the premises, makes the following Findings of Fact and Conclusions of Law, and orders that judgment be entered in accordance therewith.

Findings of Fact

I.

The Court makes no finding with reference to the allegations contained in Paragraphs I, II and III of complainants' complaint, for the reason that said allegations are admitted by both respondents.

II.

That on and prior to the 26th day of September,

1944, the complainant, Central Fruit & Vegetable Co., was a partnership conducting and engaged in the business of handling fruit and vegetables as a commission merchant and broker, at Dallas, Texas. That the complainant, West Texas Produce Company, was a partnership [167] conducting and engaged in the business of handling fruit and vegetables as a commission merchant and broker, at Fort Worth, Texas.

That on and prior to September 26, 1944, respondent, Raymond M. Crane, doing business as Associated Fruit Distributors of California, was engaged in the produce business as a broker and car lot distributor, having his principal place of business at Los Angeles, California.

That on and prior to September 26, 1944, respondent John C. Kazanjian, doing business as Red Lion Packing Company, was engaged in the business of operating vineyards in the vicinity of Exeter, California, and operating a fruit and vegetable packing house at Exeter, California.

That on and prior to September 26, 1944, one Jay Margules was a fruit and produce broker at Dallas, Texas, doing business under the firm name and style of Southwest Brokerage Company.

III.

That upon various occasions prior to September 26, 1944, the respondent, Raymond M. Crane, had acted as broker or agent for the respondent, John C. Kazanjian, in the sale of carloads of grapes grown by said respondent in the vicinity of Exeter,

California, and packed at said Exeter packing house; that shortly prior to September 26, 1944, respondent, Raymond M. Crane, discussed with said respondent, John C. Kazanjian, the matter of the sale of grapes during the grape season of 1944. That in said conversation the said John C. Kazanjian refused to employ the said Raymond M. Crane to act as his broker or agent in the sale of said grapes for the 1944 grape season, for the reason that there was a ceiling price on grapes, established under the Federal Emergency Price Control Act, and that the market for grapes at that time was very active and the said respondent, John C. Kazanjian, did not need a broker [168] or agent to secure customers for the purchase at said ceiling prices of grapes produced and packed by him; that in said conversations the said respondent, John C. Kazanjian, informed respondent, Raymond M. Crane, that he was willing to sell grapes in carload lots, but that each sale would be a separate transaction and handled upon the terms to be agreed upon at the time of the making of such sale.

IV.

That on September 26, 1944, respondent, Raymond M. Crane, sent a form telegram to thirteen different brokers or commission agents throughout the south central part of the United States, which said telegram, including the translation of the words written in code (said translation being in parenthesis), is as follows:

“Can book Emperors nine cars usone nine cars unclassified or 18 cars vineyard-run grade to go into storage packing to commence rate of one or two daily October 9th we to personally inspect AFOHD (shipping point acceptance final) basis our inspection shipper to transfer title on or after December 10th he paying all storage charges. Packed 28# net display new lugs lidded Calripe or comparable brand 500.00 part payment with confirmation price 2.53 net to shipper with ceiling that time we charging 50.00 car procurement charge ADLAM CORLU (wire immediately, must have ans. by) Thursday. Adlas immediate UPTMV (6x6 & lgr) new crop Edison district ALBIQ (approx. 85%) 3.25 can secure 3-4 cars uninspected account running heavy puff heavy sidewalls would grade ALBIEIQ (80%-85%) except for puff which not serious defect account heavy sidewall 2.50.”

That one copy of the above telegram was sent to [169] Southwest Brokerage Company of Dallas, Texas.

Shortly after September 26, 1944, a teletype conversation occurred between respondent, Raymond M. Crane, and said Jay Margules, of the Southwest Brokerage Company, in which Margules inquired as to whether or not they would have to take all of the grapes offered or as to whether they could get someone to take a couple of cars of U. S. One grapes and a couple of cars of the unclassified grapes. In this conversation respondent, Raymond M. Crane,

suggested that Jay Margules submit an offer and he would see if he could work it out.

On October 2, 1944, respondent, Raymond M. Crane, sent out another form telegram to the thirteen brokers above referred to, which said telegram, including the translation of the words written in code (said translation being in parentheses), was and is in words and figures as follows, to wit:

“CPFGP (referring our NL 26th) quoting futures Emperors secured revised deal fifteen cars USONE 2.50 net same deal CORSD (wire quick if wanted) any part.”

One of the form telegrams of October 2 was sent to the said Southwest Brokerage Company.

After sending the form telegram of October 2, 1944, respondent, Raymond M. Crane, had a teletype conversation with the said Jay Margules in which Margules stated that a deal for ten cars of grapes (six to Forth Worth and four to Dallas) was O.K. at \$2.50 net, with \$50.00 to Crane, if legal. Respondent Raymond M. Crane replied to the effect that he was not able to contact the shipper as yet, but that he was sure it was O.K. and that he would wire Southwest Brokerage definitely one way or the other as soon as he could get hold of the shipper, and respondent, Raymond M. Crane, informed the said Jay Margules that it was legal for him to charge a procurement fee or brokerage and the said Crane called to the [170] attention of Margules that the basis of the sale was \$1,000.00 deposit against each car USONE grapes, inspection as they were loaded.

That thereafter, and on October 2, 1944, respondent Raymond M. Crane talked to the respondent, John C. Kazanjian, over the long distance telephone and informed him of the transactions which had been carried on between the said Raymond M. Crane and the said Jay Margules, and the respondent, John C. Kazanjian, informed respondent, Raymond M. Crane, that he was willing to sell fifteen cars of grapes upon the terms to be set forth in a confirmation.

That thereafter, and on October 2, 1944, respondent Raymond M. Crane sent a night letter to the Southwest Brokerage Company, reading as follows, including the translation of the words written in code (said translation being in parentheses):

“Secured RedLyon Packing Company Confirmation Ten Cars Grapes as Outlined You Collect Deposits to Be Forwarded to Us Soons JUPJA (code word for the words ‘government inspection’) Wired Each Car.”

That thereafter, and on October 3, 1944, respondent, Raymond M. Crane, sent a telegram to respondent, John C. Kazanjian, reading as follows:

“Referring Telephone Have Sold for Your Account Basis 2.50 Lug Net to You Block Emperors Mentioned Five Cars Basis 750.00 Car Deposit Ten Cars Basis 1000.00 Deposit to Be Paid Upon Receipt USONE Government Inspections Now Depending You Handle Through Us Balance Cars You Mentioned for Fresh Shipment Advise When Expect Ship These Believe We Could Place Them Now

Ceiling PriedXXX Price WithDeposits Selling Basis Ability Make USONE Grade [171] Suggest Give Us Approximate Shipping Dates Mays Well Get Cleanedup Since Ceiling Precludes Any Possibility Higher Market Time of Shipment Will Forward Confirmations for Your Signature Soons Received Airmail From Buyers.”

That thereafter, and on October 4, 1944, respondent, John C. Kazanjian, sent a telegram to respondent, Raymond M. Crane, reading as follows:

“Fifteen Cars Storage US One Emperors December Tenth Conversion Satisfactory at Two Dollars and Fifty Cents FOB Exeter Guaranty by Buyer. One Thousand Dollars Deposit on 10 Cars and Seven Hundred Fifty Dollars on Five Cars Said Deposit to Be Paid Immediately on Inspection at Shipping Point. You to Arrange for Storage as Agreed. Balance of Pack Intend to Load After Oct Twentieth Will Be Glad to Make Deal on Same About the 15th of Oct.”

On October 3, 1944, and after the said J. Margules received the night letter of October 2 above quoted, he prepared a standard memorandum of sale, showing a sale of six cars of grapes to West Texas Produce Company and four cars of grapes to Central Fruit & Vegetable Co. The memorandum states that they were sold for the account of “Associated Fruit Dist. of Los Angeles, Calif. (a/c Red Lyon Pkg. Co.)” The memorandum of sale quoted

the price at \$2.50 f.o.b. "plus 50.00 buying service for Associated," plus brokerage of 3½¢ a lug to Southwest Brokerage Company. The memorandum further stated "partial payment 1000.00 per car to be made by buyers with government inspection report each car."

That the said Jay Margules thereupon sent a copy of said memorandum of sale to Raymond M. Crane and a copy to the West Texas Produce Company and a copy to the Central Fruit & Vegetable [172] Company.

V.

The Court further finds that when the respondent, Raymond M. Crane, used the following words in his telegram of September 26, 1944, viz., "500.00 part payment with confirmation, and the code word ADLAM" (meaning "offer subject to confirmation") the said respondent, Raymond M. Crane, intended that any sale negotiated as a result of the sending of said telegram should be negotiated by a standard Confirmation of Sale.

VI.

That at all times during the months of September and October, 1944, and for many years prior thereto, persons engaged in the produce business and in selling produce in carload lots, used two different forms of written documents in connection with transactions. One of said documents was known as a "Standard Memorandum of Sale," and the other of said documents was known as "Standard Confirmation of Sale."

That under the practice existing in the produce industry a Standard Memorandum of Sale was signed by the broker negotiating a sale and a copy sent to the seller and another copy sent to the buyer.

That under the practice existing in the produce industry a Standard Confirmation of Sale is signed by the buyer and by the broker or agent for the seller, and the broker or agent signs a certificate attached thereto, stating, "I hereby certify that I am authorized by the seller named above as his broker or salesman to fill out this Standard Confirmation of Sale and sign and authenticate the same in his behalf."

VII.

In the transactions involving the proposed sale of ten carloads of grapes by respondent, John C. Kazanjian, doing business as Red Lion Packing Company, to West Texas Produce Company [173] and Central Fruit & Vegetable Co., the respondent, Raymond M. Crane, doing business as Associated Fruit Distributors of California, acted as buying broker and agent for said complainants, West Texas Produce Company and Central Fruit & Vegetable Co.

That on October 10, 1944, the carload lot ceiling price on grapes established under the Federal Emergency Price Control Act was lifted by the Office of the U. S. Price Control, and the said Southwest Brokerage Company thereupon wired said Associated Fruit Distributors of California, inquiring as to whether or not it was possible to get shipment of some of the grapes at the present time

rather than put all of same in storage, and in reply to said telegram Associated Fruit Distributors of California wired Southwest Brokerage Company as follows:

“Shipper Redlion Takes View Account Ceiling Lifted Any Contracts Emperors Voided Willing Go Along Give Your Trade Preference Shipping as Packed at Market Price Which Today 3.25 AFOHD (shipping point acceptance final) Advise.”

That on October 24, 1944, complainant, West Texas Produce Company, commenced to purchase carloads of Emperor grapes to replace the grapes which it contended it had purchased from the respondents, and on October 24, 1944, complainant, Central Fruit & Vegetable Co., commenced to purchase carloads of Emperor grapes to replace the grapes which it contended it had purchased from the respondents.

VIII.

That on October 10, 1944, and up to and including the 15th day of November, 1944, the reasonable market value of U. S. No. 1 Emperor grapes in carload lots, at or in the vicinity of Exeter, California, was \$3.25 per lug. [174]

IX.

The Court further finds that the parties to this proceeding never at any time entered into a written agreement for the sale of ten carloads of grapes by either of the respondents to either of the complainants.

The Court further finds that at no time did the West Texas or the Central Fruit ever sign or execute a written authority or authorization to Jay Margules or the Southwest Brokerage Company, or to Raymond M. Crane or the Associated Fruit Distributors authorizing said persons or institutions to buy carloads of grapes for them, or either of them.

The Court further finds that at no time did the respondent, John C. Kazanjian, doing business as Red Lion Packing Company, ever authorize in writing the said Raymond M. Crane, or the Associated Fruit Distributors of California to sell ten carloads of Emperor grapes for him, nor did the said John C. Kazanjian at any time ever execute or sign a written ratification of said proposed sale.

The Court further finds that at all times between the 26th day of September, 1944, and the 10th day of October, 1944, the ceiling price on Emperor grapes in carload lots on a sale negotiated by a packing house was \$2.50 per lug and, in this connection, the Court finds that the West Texas Produce Company and Central Fruit & Vegetable Co. proposed, agreed, or contracted to pay the sum of \$2.50 per lug to the owner of said grapes, and \$50.00 a car brokerage to Associated Fruit Distributors of California, and 31½c a lug commission to Southwest Brokerage Company. In this regard the Court finds that said West Texas Produce Company and Central Fruit & Vegetable Co. proposed, agreed or contracted to pay in connection with said proposed sale or sales, a sum of money in excess of the selling

price as established under the Federal Emergency Price Control Act. [175]

X.

The Court further finds that the statements and representations made by the said Raymond M. Crane, dba Associated Fruit Distributors of California to the said J. Margules and the Southwest Brokerage Company were not false or fraudulent, and were not made with any intention to defraud said Southwest Brokerage Company or the said Jay Margules or the West Texas Produce Company or the Central Fruit & Vegetable Co.

John C. Kazanjian's, doing business as Red Lion Packing Company, transactions were all had entirely within the State of California. He did not in any manner communicate with any person or have any transactions with any person outside the State of California nor have any agent carry on any such transactions for him.

That the parties never, at any time, finally agreed upon any terms of a contract for the sale of ten carloads of grapes or any larger or less number of carloads of grapes; that there was no meeting of minds of the parties as to the terms of the proposed sale; that John C. Kazanjian was, at all times during their negotiations, at or near Exeter, California.

Conclusions of Law

1. That the telegrams sent by Crane to Margules required that any contract entered into should be confirmed in writing by the parties to

the proposed contract and in particular John C. Kazanjian at Exeter, California.

2. That respondent Kazanjian never accepted the terms proposed by Margules and his telegram of October 4th to Crane was never accepted by Margules or the complainants.

3. That no binding contract could have been entered into by Margules or Crane on behalf of the complainants unless the authority to Margules and Crane was in writing, as the law of [176] California required that such contracts be in writing.

4. That assuming there was a binding agreement on the part of complainants to buy and Kazanjian to sell ten carloads of grapes, the complainant acquiesced in the repudiation of said contract on October 24, 1944, by contracting to purchase, or purchasing grapes, to replace the grapes covered by the Kazanjian contract, and the measure of damages would arise as of October 24, 1944.

5. That the respondent Crane did not misrepresent to the said Margules or the complainant any facts with reference to the contract in question or the proposed contract, and the statements or representations by Crane were not fraudulent and no liability arose on the part of Crane for the statements or representations made by him to Margules or the complaint.

6. That the above-entitled action should be dismissed as to the respondent John C. Kazanjian, doing business as Red Lion Packing Company.

7. That the above-entitled action should be dismissed as to the respondent Raymond M. Crane, doing business as Associated Fruit Distributors of California.

Let judgment be entered accordingly.

Dated this 11th day of October, 1950.

/s/ PEIRSON M. HALL,
Judge.

Disapproved as to Form:

J. MANUEL HOPPENSTEIN
and
HARRY A. PINES,

By /s/ HARRY A. PINES,
Attorneys for Complainants
and Appellees.

Approved as to Form:

/s/ HENRY O. WACKERBARTH,
Attorney for Respondent and
Appellee.

Receipt of Copy acknowledged.

[Endorsed]: Filed Oct. 11, 1950. [177]

In the District Court of the United States, Southern
District of California, Central Division

No. 8244 PH

CENTRAL FRUIT & VEGETABLE CO., and
WEST TEXAS PRODUCE COMPANY,
Complainants and Appellees,

vs.

ASSOCIATED FRUIT DISTRIBUTORS OF
CALIFORNIA and RAYMOND M. CRANE,
Respondent and Appellee,

vs.

RED LION PACKING COMPANY and JOHN C.
KAZANJIAN,
Respondent and Appellant.

JUDGMENT

The above-entitled action came on regularly for trial on the 11th day of July, 1950, before the above-entitled Court, in courtroom No. 3 thereof, Hon. Peirson M. Hall, Judge, presiding, the complainant and appellee, West Texas Produce Company, appearing by Harry Bockstein, one of the partners, and both complainants and appellees appearing by J. Manuel Hoppenstein of Dallas, Texas, and Harry A. Pines of Los Angeles, California; the respondent and appellee, Raymond M. Crane, doing business as Associated Fruit Distributors of California, ap-

pearing in person and by Henry O. Wackerbarth, his attorney, and the respondent and appellant, John [179] C. Kazanjian, doing business as Red Lion Packing Company, appearing in person and by Messrs. G. L. Aynesworth and L. Nelson Hayhurst, his attorneys; and said action proceeded to trial upon (1) the complaint of the complainants originally filed before the War Food Administrator of the United States of America; (2) the answer of the respondent, John C. Kazanjian, doing business as Red Lion Packing Company, originally filed before the War Food Administrator of the United States of America; and (3) the amended answer of respondent and appellee, Raymond M. Crane, doing business as Associated Fruit Distributors of California, filed in the above-entitled Court. Thereupon, evidence both oral and documentary was introduced on behalf of the respective parties, and the evidence being closed, the cause was submitted to the Court for its consideration and decision, and after due deliberation thereon, the Court, being fully advised in the premises, and Findings of Fact and Conclusions of Law having been signed and filed herein, and the Court having ordered that judgment be entered in accordance therewith,

Now, Therefore, on motion of Henry O. Wackerbarth, attorney for Raymond M. Crane, doing business as Associated Fruit Distributors of California, and Aynesworth and Hayhurst, as attorneys for

John C. Kazanjian, doing business as Red Lion Packing Company,

It Is Therefore Ordered, Adjudged and Decreed:

1. That the complainant and appellee and John C. Kazanjian, doing business as Red Lion Packing Company did not at any time make or enter into any agreement for the sale and purchase of grapes.

2. That this action be and it is hereby dismissed as to John C. Kazanjian doing business as Red Lion Packing Company.

3. That said negotiations did not result in the making of a contract because the parties to said transaction did not at any time comply with the laws of California governing said contract. [180]

4. That said action be and the same is hereby dismissed as to Raymond M. Crane, doing business as Associated Fruit Distributors of California.

5. That assuming there was a binding agreement on the part of complainants to buy and Kazanjian to sell, 10 carloads of grapes, the complainants acquiesced in the repudiation of said contract on October 24, 1944, by contracting to purchase, or purchasing grapes to replace the grapes covered by the Kazanjian contract, and the measure of damages would arise as of October 24, 1944, at which time the price of grapes was only \$3.25 per lug or a difference of 75c in the contract price and the market price.

Done in open court this 11th day of October,
1950.

/s/ PEIRSON M. HALL,
Judge.

Approved as to form:

/s/ HENRY O. WACKERBARTH,
Attorney for Respondent
and Appellee Raymond M.
Crane, etc.

Disapproved as to form:

J. MANUEL HOPPENSTEIN,
and
HARRY A. PINES,

By /s/ HARRY A. PINES,
Attorneys for Complainants
and Appellees Central
Fruit, et al.

Judgment entered Oct. 1, 1950.

Receipt of copy acknowledged.

[Endorsed]: Filed Oct. 11, 1950. [181]

[Title of District Court and Cause.]

MOTION FOR NEW TRIAL

Come now Central Fruit & Vegetable Co. and West Texas Produce Co., Complainants and Appellees in the above-entitled action, and move the Court for a new trial in the above-entitled proceedings, upon the following grounds:

I.

Insufficiency of the evidence to sustain the decisions of fact made by the Court as follows:

(a) The finding of fact (part of finding No. IV) to the effect that on October 2, 1944, Kazanjian, in a long distance telephone conversation with Crane, informed Crane that he was willing to sell fifteen cars of grapes "upon the terms to be set forth in a confirmation," is contrary to the weight of [183] the evidence.

(1) The weight of the evidence establishes that in such conversation Kazanjian informed Crane that the terms worked out by Crane with the purchasers were satisfactory to him and that it was satisfactory to Kazanjian that Crane go ahead and confirm the sale.

(2) Crane testified that he informed Kazanjian in such conversation of all of the telegrams and communications between Crane and Margules, and that Kazanjian stated that such terms were acceptable to him.

(b) The finding of fact (finding No. V) that Crane by the use of the words "part payment with confirmation" and "offer subject to confirmation" intended that any sale thus negotiated be the form known as a Standard Confirmation of sale, is inconsistent with the weight of credible evidence in this case.

(1) Crane himself testified that his receipt of the Standard Memorandum of Sale from Margules left no further document necessary for completion of the transaction.

(2) Crane testified that in accordance with the customs and usage of the trade telegrams were a satisfactory substitute for confirmation forms.

(3) The finding lacks credibility for the reason that the defense was never asserted before the Secretary of Agriculture or in the trial briefs herein, but was raised for the first time at the trial. It is unreasonable to assume that if such document were intended and not furnished, the point would not have been raised prior to almost six years after negotiation of the contract.

(4) The finding is inconsistent with Crane's own testimony that the words "subject to confirmation" could mean various things depending upon the parties and circumstances.

(5) The finding is inconsistent with the conduct of the parties, as it is logical to assume that had a Standard Confirmation of Sale form been required, Crane would have rejected the [184] Standard

Memorandum of Sale sent him by Margules and would have called for the confirmation form.

(6) The finding is also inconsistent with the conduct of the parties in that the repudiation of the sale by Kazanjian was on the ground that the lifting of ceiling prices on grapes had relieved him of his obligation to perform and upon no other ground.

(7) The words "offer subject to confirmation" and the words "part payment with confirmation" are common trade terms, and are not susceptible of special meaning especially where the intention to attribute special meaning is undisclosed.

(8) The evidence in this case, and judicial notice by this Court of the decisions of the Secretary of Agriculture convincingly establish that a Standard Confirmation of Sale and the Standard Memorandum of Sale are used interchangeably with equal effectiveness for the purpose of completing sales of produce.

(c) The finding of fact (part of finding No. VII) to the effect that Crane acted as buying broker and agent for the Complainants is a proper finding, except that it is not complete. The evidence further requires the Court to find that Crane also acted as agent for Kazanjian in soliciting offers for the grapes, in advising Margules of the confirmation of the sale by Kazanjian, in advising Margules of the repudiation of the sale by Kazanjian, and in advising Margules of a counteroffer by Kazanjian

for delivery of grapes at a new and different price. The evidence discloses that it is common practice for brokers to act as agent for both parties in a transaction, and that in this case Crane acted as agent for both buyers and sellers.

(d) The finding of fact (part of finding No. IX) that the parties hereto never entered into a written agreement for the sale of ten car loads of grapes by either of respondents to either of the complainants is inconsistent with the weight of credible evidence in this case. [185]

(1) The finding is actually a conclusion of law, and the said finding is unsupported by the weight of credible evidence.

(2) Written documents in evidence constitute a written agreement for the sale by Kazanjian of ten car loads of grapes to complainants. On October 2, 1944, complainants, through Margules as broker, by teletype, directed Crane to buy ten car loads of grapes on terms which had theretofore been discussed and fixed by Crane and Margules. On October 2, 1944, Crane, by telegram to Margules, advised that confirmation had been received from Kazanjian as seller. On October 2, 1944, Crane advised Kazanjian by telephone of having effected the sale on Kazanjian's behalf. On October 3, 1944, Crane confirmed the sale to Kazanjian by telegram stating that he had sold grapes for Kazanjian's account on the terms mentioned. On October 4, 1944, Kazanjian notified Crane by telegram that such sale, on the terms mentioned, was satisfactory. The fore-

going documents fully constitute a written agreement covering the sale in question.

(3) The evidence introduced by respondents to negative such sale was self-serving, contradictory and incredible and insufficient to overcome the prima facie effect of the findings of the Secretary of Agriculture on this subject.

(e) The finding of fact (part of finding No. IX) to the effect that Kazanjian did not at any time execute or sign a written ratification of the sale is contradicted by the evidence of the telegram dated October 4, 1944, sent by Kazanjian to Crane confirming the sale of the ten car loads by Crane for the account of Kazanjian.

(f) The finding of fact (part of finding No. IX) to the effect that complainants had proposed to pay for ten car loads of grapes a price in excess of the lawful ceiling price is an improper conclusion of law and is not supported by the evidence. The [186] evidence establishes that complainants agreed to pay to the seller of the grapes no more than \$2.50 per lug which was less than the ceiling price for said grapes. It also discloses that as part of said transaction complainants agreed to pay 31½c per lug as a brokerage commission to the Southwest Brokerage Company in Dallas, Texas, and \$50.00 per car-load as a procurement fee to Crane as procurement broker. The burden of establishing this defense was upon the respondents, and respondents failed to establish a price paid for the grapes in excess of the ceiling price.

(g) The finding of fact (part of finding No. X) that the statements made by Crane to Margules were not false or fraudulent and not made with intent to defraud Margules or complainants, is not supported by the evidence, unless the Court finds that Kazanjian had confirmed the sale to complainants. If the Court finds that Kazanjian had not confirmed such sale, it necessarily follows that Crane falsely represented that Kazanjian had so confirmed the sale, and that such representation was made with the intention that Margules and complainants rely upon such representation.

(h) The finding of fact (part of finding No. X) that Kazanjian did not have any agent carrying on any transactions for him with persons outside of the State of California, is unsupported by the evidence, and is contradicted by the evidence that after Crane, by telephone, on October 2, 1944, and by telegram on October 3, 1944, had notified Kazanjian of the terms of the sale and that he had sold fifteen carloads of grapes for Kazanjian's account, Kazanjian, by telegram, on October 4, 1944, confirmed such sale as being satisfactory.

(i) The finding of fact (part of finding No. X) that the parties never reached a final agreement and there was no meeting of the minds, is not supported by the evidence.

(1) It is inconsistent with the written documents in evidence establishing the contract of sale. [187]

(2) It is inconsistent with the testimony of

Crane that a meeting of the minds had been reached between the buyer and the seller.

(3) It is inconsistent with the evidence that after Crane had notified Kazanjian of the terms of the sale and the fact that he had completed a sale, Kazanjian wired Crane that such deal was satisfactory.

(4) It is inconsistent with the evidence of the conduct of the parties in that the failure by Kazanjian to deliver the grapes under the contract was explained by Crane and Kazanjian both as being due solely to the lifting of ceiling prices, and not upon the ground that there had not been a meeting of the minds.

(5) It is inconsistent with the evidence of the conduct of Crane in failing to object to the Standard Memorandum of Sale sent him by Margules confirming the terms of the sale.

II.

Errors of law, as follows:

(a) It is error for the Court to make the conclusion of law (conclusion No. 1) that the telegrams sent by Crane to Margules required that any contract entered into should be confirmed in writing by the parties and particularly by Kazanjian.

(1) The foregoing conclusion of law is in fact an erroneous finding of fact unsupported by the evidence of the case.

(2) The evidence fails to support any conclu-

sion that the words "subject to confirmation" called for a special form of document or for a written confirmation as distinguished from an oral confirmation.

(3) None of the telegrams from Crane to Margules demand or request a written confirmation.

(4) The evidence does not contain anything to establish that the respondents communicated to the complainants any particular [188] intent that there be a written confirmation signed by all of the parties to the transaction.

(b) It was error for the Court to make the conclusion of law (conclusion No. 2) that Kazanjian never accepted the terms proposed by Margules and that the telegram from Kazanjian to Crane of October 4, 1944, was never accepted by Margules or the complainants.

(1) The telegram of October 4, 1944, from Kazanjian to Crane does not disclose new terms, but repeats the terms theretofore agreed upon and states that such terms are satisfactory.

(2) Crane testified that the terms of Kazanjian's wire of October 4, 1944, were the same as the terms accepted by the Southwest Brokerage Company on behalf of the complainants.

(3) The telegram of October 4, 1944, did not contain any language indicating a non-acceptance of the sale which, on October 3, 1944, Crane had informed Kazanjian by telegram had been completed.

(c) It was error for the Court to make the conclusion of law (conclusion No. 3) that no binding contract could have been entered into by Margules or Crane on behalf of complainants unless authority to Margules and Crane was in writing.

(1) The authority of Crane to act for complainants was evidenced by writings signed by Margules as broker and agent for the complainants.

(2) The agency between complainants and Margules was governed by Texas law, all of said parties being residents of the State of Texas, and the agency having been created in the State of Texas and under the law of the State of Texas, no writing was required to create such agency.

(3) The statute of frauds is not available as a defense in this case under any circumstances. The statute of frauds of the State of California is a procedural statute and not a matter of substantive law. The present action was brought to [189] enforce a liability under the Perishable Agricultural Commodities Act, a federal statute. In enforcing a federal statute, a federal court is not affected by procedural statutes of the State wherein the action is being tried or the State whose laws govern the contract.

(4) Even if the statute of frauds of the State of California were applicable herein, it serves merely to require that there be a written memorandum signed by the "party to be charged" in the proceeding. The parties to be charged in this proceeding are Crane and/or Kazanjian. The written

memoranda in evidence in this case, signed by both Crane and Kazanjian, are sufficient to satisfy the statute of frauds of the State of California.

(d) It was error for the Court to make the conclusion of law (conclusion No. 4) that there had been an acquiescence by complainants of the repudiation of the contract by Kazanjian on October 24, 1944, and that the measure of damage would arise as of October 24, 1944. The law of the State of California and the Uniform Sales Act are well settled that the date when delivery was to have been made rather than the date of repudiation governs the determination of the measure of damages.

(e) It was error for the Court not to recognize as the law of the case that a broker may be the agent of both parties and that in this case the evidence disclosed that Crane acted as procurement broker for complainants and also acted as agent for Kazanjian in informing Margules that Red Lion had confirmed the sale and in other particulars.

(f) It was error for the Court to make the conclusion of law (conclusion No. 5) that Crane did not misrepresent any facts to Margules with reference to the contract in question and that the statements and representations made by Crane were not fraudulent and that no liability arose on the part of Crane for statements and representations made by him to Margules or the complainants. [190]

(1) If the Court's finding is permitted to stand to the effect that Kazanjian did not confirm the

sale, it necessarily follows that the telegram from Crane to Margules on October 2, 1944, that he had secured Kazanjian's confirmation of the sale, was false.

(2) The fraudulent purpose required by Section 2b(4) of the Perishable Agricultural Commodities Act of 1930, as amended, does not require actual fraud but may consist of a false statement or representation of a material fact with intention that the other party rely thereon. All of these elements are satisfied by uncontradicted testimony in this case.

(3) The conduct of Crane in informing complainants of the confirmation of the sale and the failure by Crane to object to the Standard Memorandum of Sale as the proper form (assuming that the Court finds that the Standard Confirmation of Sale was the form contemplated herein) constitutes a violation of Section 2b(4) of the Perishable Agricultural Commodities Act as a failure "without reasonable cause to perform any specification or duty, express or implied, arising out of any undertaking in connection with any such transaction;". The foregoing provision from said section also does not require any evidence of a fraudulent purpose.

III.

Error in law in admitting evidence over the objections of the complainants, as follows:

(a) Receipt in evidence of defendant's Exhibit A, consisting of the report of the Examiner of the

Secretary of Agriculture, which had been superseded by the findings of fact and conclusions of law officially rendered by the Judicial Officer of the Department of Agriculture. Said evidence is incompetent, irrelevant, immaterial, and hearsay.

(b) Receipt of testimony of Crane that when he sent the telegram of September 26, 1944, to Southwest Brokerage Company and [191] the amended telegram of October 2, 1944, that by the use of the words "subject to confirmation" in such telegrams, he was referring to a confirmation by use of a Standard Confirmation of Sale, as known to the trade. Such testimony was an attempt to vary the terms of a written instrument prepared by the said witness, and was a statement of a self-serving conclusion.

(c) Receipt of testimony over the objection of complainants relating to a failure of complainants to sign a written instrument. Such testimony was incompetent, irrelevant, immaterial and based upon a misconception of the statute of frauds which requires only that a written memorandum be signed by the party to be charged in the proceeding.

(d) Receipt of testimony over the objection of the complainants as to the value of Emperor grapes during the months of October and November of 1944. Said evidence was objectionable on the grounds that it was incompetent, irrelevant and immaterial, said evidence having been received under a misconception of the law of damages to the effect that the date of repudiation rather than

the date of delivery contracted for governs in determining such damages.

IV.

Newly discovered evidence upon the subject of the existence of any custom or usage in the trade requiring the use of a Standard Confirmation of Sale form rather than the Standard Memorandum of Sale form. This Court permitted evidence to the effect that customs of the trade in this transaction required the use of the Standard Confirmation of Sale rather than the Standard Memorandum of Sale. Attached hereto and made a part hereof are the affidavits of Harry Bockstein, J. Manuel Hoppenstein and Harry A. Pines disclosing that such contention on the part of the respondents was unknown to complainants and their counsel until raised for the first time during the trial of the case before this [192] Court; that the pendency of the trial did not permit complainants, who were residents of the State of Texas, to obtain evidence on the subject with which to inform the Court of the actual practices, other than the testimony of Harry Bockstein, one of the partners of one of the complainants, to the effect that in his forty-five years of active experience in the business he had never signed the form known as Standard Confirmation of Sale, but that in his experience only the Standard Memorandum of Sale was used. The affidavits will disclose also that upon diligent inquiry immediately following the trial, complainants ascertained that unlimited testimony was available

to the effect that the Standard Confirmation of Sale form is seldom if ever used, and that the experience of most of the people engaged in the interstate produce business is that the Standard Memorandum of Sale is always used when a transaction is negotiated by a broker. That attached hereto also are the affidavits of R. C. Mills of Dallas, Texas; Bill Taylor, of Dallas, Texas; Joe Mosesman of Dallas, Texas; George Reaves of Dallas, Texas; Sam Lipshitz of Fort Worth, Texas; S. W. Wilson of Fort Worth, Texas; Jim Hill of Fort Worth, Texas; Harry Bockstein of Fort Worth, Texas, and Abe M. Katz of Corpus Christi, Texas, all of whom have stated that if called upon to testify in this case they will testify that they are familiar with the customs, usage and practice in the produce trade in connection with the sale and confirmation of sale of perishable agricultural commodities and it was not the custom and usage in the trade to consummate sales by the use of the form known as Confirmation of Sales agreement, but on the contrary the usage and custom in the trade was and is to confirm sales on the form known as "Standard Memorandum of Sale" and signed by the broker. The affidavit of Harry A. Pines, attached hereto, will further disclose that an examination of the decisions of the Secretary of Agriculture discloses no custom or practice requiring the use of the [193] Standard Confirmation of Sale agreement, but on the contrary that the rules and regulations of the Secretary of Agriculture permit and direct the use of either form, and that where brokers are involved

the overwhelming number of cases which have reached the Secretary of Agriculture for decision disclose the use of the Standard Memorandum of Sale rather than the Standard Confirmation of Sale form.

V.

Newly discovered law, consisting of the decision of the Circuit Court of Appeals for the Third Circuit, in the case of *Rothenberg v. H. Rothstein & Sons*, 183 Fed. (2d) 524, decided on July 21, 1950 (subsequent to the trial of the instant case), and not reported until September 25, 1950. This case holds that where the language of the statute of frauds is similar to that of Section 1624a of the California Civil Code, such a statute is a procedural statute only and will not constitute a defense to an action brought under the Perishable Agricultural Commodities Act.

By special memorandum attached hereto, the determinative effect of such case on the issue of the statute of frauds herein is discussed.

Dated this 20th day of October, 1950.

J. MANUEL HOPPENSTEIN
and

HARRY A. PINES,

By /s/ HARRY A. PINES,

Attorneys for Complainants
and Appellees.

[Endorsed]: Filed Oct. 20, 1950. [194]

[Title of District Court and Cause.]

NOTICE OF MOTION TO SET MOTION FOR
NEW TRIAL AND TO GRANT ORAL AR-
GUMENTS THEREON.

To Associated Fruit Distributors of California and
Raymond M. Crane, Respondent and Appellee,
and to Henry O. Wackerbarth, Their Attorney,
and to Red Lion Packing Company and John C.
Kazanjan, Respondent and Appellant, and to
Aynesworth & Hayhurst, Their Attorneys:

You and each of you will please take notice that
on the 6th day of November, 1950, at 10:00 o'clock
a.m., or as soon thereafter as counsel may be heard,
a motion will be made before the Honorable Peirson
M. Hall, Judge of the United States District [216]
Court, in the court room of the said judge, in the
Federal Building, Temple and Spring Streets, Los
Angeles, California, for an order setting a date of
hearing upon the Motion for New Trial filed herein
by Central Fruit & Vegetable Co. and West Texas
Produce Company, Complainants and Appellees
herein, and for an order permitting the presentation
of oral argument upon said Motion for New Trial.

This motion will be made upon the files and rec-
ords of this proceedings, including the Motion for
New Trial and affidavits and points and authorities
filed therewith, and upon the affidavit of Harry A.

Pines and the points and authorities attached hereto.

Dated: October 26th, 1950.

J. MANUEL HOPPENSTEIN

and

HARRY A. PINES,

By /s/ HARRY A. PINES,

Attorneys for Central Fruit & Vegetable Co. and
West Texas Produce Company, Complainants
and Appellees. [217]

[Title of District Court and Cause.]

AFFIDAVIT OF HARRY A. PINES IN SUP-
PORT OF MOTION TO PERMIT ORAL
ARGUMENT

State of California,

County of Los Angeles—ss.

Harry A. Pines, being first duly sworn upon his
oath, deposes and says:

That he is one of the attorneys of record for Cen-
tral Fruit & Vegetable Co. and West Texas Produce
Company, Complainants and Appellees herein, who
have filed a Motion for New Trial in this proceed-
ing.

That your affiant veritably believes that [218]
careful consideration by this court of said Motion
for New Trial will result in the granting of a new
trial herein; and that proper presentation of said
Motion for New Trial requires the making of oral
arguments thereon.

That many of the new grounds upon which the

Motion for New Trial is based involves the sufficiency of the evidence to sustain the findings of fact made by the court. That it will be necessary for counsel to refer to the testimony presented to the court, and to make reference to the reporter's transcript of the proceedings. That although the Motion for New Trial sets forth in detail the basis upon which the findings of the court are not supported by the evidence, it is necessary to make reference to specific testimony which requires an opportunity for oral argument.

It is very important that the court carefully consider the Motion for New Trial, as the decision of the court as it now stands will cause untold confusion to the interstate perishable agricultural commodities industry. That the decision of the court has placed an unwarranted emphasis upon the form known as "Standard Confirmation of Sale," and will create confusion amongst the dealers and brokers unaccustomed to the use of such form in view of the court's ruling that "subject to confirmation" necessarily contemplates the execution of a "Standard Confirmation of Sale."

Oral argument is also advisable in view of the decision of the Circuit Court of Appeals for the Third Circuit. In the case of *Rothenberg v. H. Rothstein & Sons*, 183 Fed. (2d) 524, decided after the trial of this case, it was determined that in an action such as the instant one the statute of frauds based upon a statute similar to the California statute is not a defense. Because of the importance of the question and the need to consider a decision not

available to the court or counsel at the time of trial, oral argument thereon is highly desirable.

/s/ HARRY A. PINES,

Subscribed and Sworn to Before Me this 26th day of October, 1950.

[Seal] /s/ BLANCHE MORRIS,

Notary Public in and for Said
County and State. [219]

[Title of District Court and Cause.]

POINTS AND AUTHORITIES IN SUPPORT
OF MOTION FOR SETTING AND FOR
ORAL ARGUMENT

Rule 17 (b) (4) of the Local Rules of this court provides that when the Motion for New Trial is ready for hearing, the same shall, without any request from either party, be placed by the clerk upon the next motion calendar, unless the judge assigns some other day for the hearing thereof.

Rule 3 (c) of the Local Rules provides that motions in general shall be submitted and determined upon the motion papers referred to in the rule. It further provides that oral arguments shall be per-

mitted only upon application and proper showing to [220] the judge presiding at the hearing.

Dated: October 26th, 1950.

Respectfully submitted,

J. MANUEL HOPPENSTEIN

and

HARRY A. PINES,

By /s/ HARRY A. PINES,

Attorneys for Central Fruit & Vegetable Co. and
West Texas Produce Company, Complainants
and Appellees.

Affidavit of Service by Mail attached.

[Endorsed]: Filed Oct. 26, 1950. [221]

At a stated term, to wit: The September Term, A.D. 1950, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday, the 6th day of November, in the year of our Lord one thousand nine hundred and fifty.

Present: The Honorable Peirson M. Hall,
District Judge.

[Title of Cause.]

MINUTES OF NOV. 6, 1950

For hearing on motion of plaintiff for new trial,

pursuant to notice of Oct. 26, 1950; Harry A. Pines, Esq., appearing as counsel for Central Fruit & Vegetable Co.; Henry O. Wackerbarth, Esq., appearing as counsel for Associated Fruit Distributors; Nelson Hayhurst, Esq., appearing as counsel for Red Lion Packing; Court orders that defendants have ten days to answer and plaintiff give days thereafter to reply; the cause then to stand submitted. [222a]

At a stated term, to wit: The September Term, A.D. 1950, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Tuesday, the 16th day of January, in the year of our Lord one thousand nine hundred and fifty-one.

Present: The Honorable Peirson M. Hall,
District Judge.

[Title of Cause.]

MINUTES OF JANUARY 16, 1951

This cause being submitted on motion of Central Fruit & Vegetable Co. and West Texas Produce Co. for a new trial, the Court having considered same, including the briefs and arguments of counsel, denies said motion. [222b]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Central Fruit & Vegetable Co. and West Texas Produce Company, Complainants and Appellees in the above-entitled action, hereby appeal to the United States Court of Appeals for the Ninth Circuit from the judgment entered on October 11, 1950, an order having been entered on January 16th, 1951, denying the motion of said Complainants and Appellees for a new trial.

This 13th day of February, 1951.

J. MANUEL HOPPENSTEIN

and

HARRY A. PINES,

By /s/ HARRY A. PINES,

Attorneys for Complainants
and Appellees herein.

Affidavit of Service by Mail attached.

[Endorsed]: Filed Feb. 14, 1951. [223]

[Title of District Court and Cause.]

UNDERTAKING FOR COST BOND
ON APPEAL

Bond No. 2583444e

Know All Men by These Presents:

Whereas, Central Fruit and Vegetable Co. and West Texas Produce Company, Complainants, in the above-entitled action, are about to appeal to the United States Circuit Court of Appeals for the Ninth Circuit, in the State of California, from a judgment entered October 11, 1950, against Central Fruit and Vegetable Co. and West Texas Produce Company, Complainants in said action, in the said District Court of the United States in favor of Associated Fruit Distributors of California, Raymond M. Crane, Red Lion Packing Company and John C. Kazanjian, Respondents.

Now Therefore, in consideration of the premises and of such appeal, the undersigned Hartford Accident and Indemnity Company, a corporation organized and existing under the laws of the State of Connecticut and authorized to transact a surety business in the State of California, as Surety, does hereby undertake and promise on the part of the Appellees that said Appellees shall answer all costs which may be adjudged against them or either of them if the appeal is dismissed or the order is affirmed or such costs as the Appellate Court may award if the order is modified, not exceeding Two Hundred Fifty

(\$250.00) Dollars to which amount it acknowledges itself bound.

This recognizance shall be deemed and construed to contain the "consent and Agreement" for summary judgment and execution thereon mentioned in Rule No. 8 of the District Court.

In Witness Whereof, the said surety has caused these presents to be executed and its official seal attached by its duly authorized Attorney-in-Fact at Los Angeles, California, the 15th day of February, 1951.

HARTFORD ACCIDENT AND
INDEMNITY CO.

[Seal] By /s/ D. J. WAITE,
Attorney-in-Fact.

Examined and recommended for approval as provided in Rule No. 8.

/s/ HARRY A. PINES,
Attorney.

The Premium Charge on This Bond is [225]
\$10.00.

State of California,
County of Los Angeles—ss.

On this 15th day of February, in the year 1951, before me, Eleanor G. Davis, a Notary Public in and for said County, residing therein, duly commissioned and sworn, personally appeared D. J. Waite, known to me to be the Attorney-in-Fact of the Hartford Accident and Indemnity Company, the Corporation

described in and that executed the within instrument, and also known to me to be the person who executed it on behalf of the Corporation therein named, and he acknowledged to me that such Corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal] /s/ ELEANOR G. DAVIS,
Notary Public in and for the
County of Los Angeles,
State of California.

My Commission Expires May 27, 1951.

[Endorsed]: Filed Feb. 16, 1951. [225]

[Title of District Court and Cause.]

STATEMENT OF POINTS INTENDED TO BE RELIED UPON ON APPEAL

Complainants and appellees, Central Fruit and Vegetable Co. and West Texas Produce Company, now appealing from the judgment filed herein on October 11, 1950, do hereby set forth the following points upon which they intend to rely on appeal, to wit:

1. That the evidence is insufficient to support the sixth unnumbered subparagraph of Paragraph IV of the Findings of Fact wherein the District Court found that in a long distance telephone conversation

on October 2, 1944, between Crane and Kazanjian, Kazanjian informed Crane that he was willing to sell fifteen cars of grapes "upon the terms to be set forth in a confirmation."

2. That the evidence is insufficient to support Finding No. V of the Findings of Fact wherein the District Court found [226] that Crane by use of the following words in his telegram of September 26, 1944, to wit: "500.00 part payment with confirmation" and by use of the code word "ADLAM," intended that any sale negotiated as a result of the sending of said telegram should be negotiated by a special form known as a Standard Confirmation of Sale.

3. That the evidence is insufficient to support the first unnumbered subparagraph of Paragraph IX of the Findings of Fact wherein the District Court found that the parties to this proceeding never at any time entered into a written agreement for the sale of ten carloads of grapes by either of the respondents to either of the complainants.

4. That the evidence is insufficient to support that portion of the third unnumbered subparagraph of Paragraph IX of the Findings of Fact wherein the District Court found that Kazanjian at no time executed or signed a written ratification of the sale.

5. That the evidence is insufficient to support the fourth unnumbered subparagraph of Paragraph IX wherein the District Court found that complainants had proposed, agreed or contracted to pay, in connection with said proposed sale or sales, a sum of

money in excess of the selling price as established under the Federal Emergency Price Control Act.

6. That the evidence is insufficient to support the first unnumbered subparagraph of Paragraph X of the Findings of Fact wherein the District Court found that the statements and representations made by Crane to Margules and the Southwest Brokerage Company were not false or fraudulent, and were not made with any intention to defraud said Southwest Brokerage Company or the said Margules or the complainants herein.

7. That the evidence is insufficient to support that portion of the second unnumbered subparagraph of Paragraph X of the Findings of Fact wherein the District Court found that Kazanjian did not have any agent carrying on any transactions in his behalf with any person [227] outside of the State of California.

8. That the evidence is insufficient to support the third unnumbered subparagraph of Paragraph X of the Findings of Fact wherein the District Court found that the parties hereto had never at any time finally agreed upon any terms of a contract for the sale of ten carloads of grapes or any other number of carloads of grapes, and that there was no meeting of minds of the parties as to the terms of the proposed sale.

9. That neither the Findings of Fact nor the evidence are sufficient to support or justify the Conclusion of Law set forth under Paragraph 1 of the Con-

clusions of Law wherein the District Court concluded that the telegrams sent by Crane to Margules required that any contract entered into should be confirmed in writing by the parties to the proposed contract and in particular Kazanjian at Exeter.

10. That neither the Findings of Fact nor the evidence are sufficient to support or justify the Conclusion of Law set forth under paragraph 2 of the Conclusions of Law wherein the District Court concluded that Kazanjian never accepted the terms proposed by Margules and that Kazanjian's telegram of October 4th, 1944, to Crane was never accepted by Margules or the complainants.

11. The District Court erred in its Conclusion of Law No. 3 in concluding that no binding contract could have been entered into by Margules or Crane on behalf of the complainants unless the authority to Margules and Crane was in writing.

12. That neither the Findings of Fact nor the evidence are sufficient to support or justify Conclusion No. 4 wherein the District Court concluded that the complainant acquiesced in the repudiation of the contract on October 24, 1944, by undertaking to replace the grapes covered by the Kazanjian contract, and that the measure of damages would arise as of October 24, 1944.

13. That neither the Findings of Fact nor the evidence are [228] sufficient to support or justify Conclusion of Law No. 5 of the Conclusions of Law wherein the District Court concluded that Crane

did not misrepresent to Margules or the complainant any facts with reference to the contract in question or the proposed contract, and that the statements or representations by Crane were not fraudulent, and that no liability arose on the part of Crane for the statements or representations made by him to Margules or the complainant.

14. That the District Court erred in Conclusion No. 6 of the Conclusions of Law in concluding that the action should be dismissed as to Kazanjian.

15. That the District Court erred in Conclusion No. 6 of the Conclusion of Law in concluding that the action should be dismissed as to Crane.

16. That the District Court erred in failing to give effect to the Findings of Fact of the Secretary of Agriculture as constituting prima facie evidence of the facts at issue in this case.

17. The District Court erred in receiving in evidence over the Complainants' objections, Respondents' Exhibit A consisting of an interlocutory report by an examiner of the Secretary of Agriculture, which report was superseded by the official decision of the Secretary of Agriculture.

18. That the District Court erred in receiving the testimony of Crane over the objection of complainants to the effect that when he sent the telegram of September 26, 1944, to Southwest Brokerage Company, he was referring to a special form known as Standard Confirmation of Sale.

19. The District Court erred in receiving in evidence, over the objection of complainants, the testi-

mony of Crane and Kazanjian relating to a failure of complainants to sign a written instrument evidencing the authority of Margules to act in behalf of the complainants.

20. The District Court erred in receiving testimony of [229] Crane and Kazanjian over the objection of complainants as to the value of Emperor grapes during the months of October and November of 1944.

21. The District Court erred in failing to conclude that a contract binding upon Kazanjian for the sale of the ten cars of grapes resulted from the following written documents to wit: (1) The telegram from Crane to Southwest Brokerage Company on October 2, 1944, reading "secured Red Lion Packing Company confirmation, 10 cars grapes as outlined * * *," (2) The standard memorandum of sale prepared and signed by Southwest Brokerage Company and forwarded on October 3, 1944, to Crane, and the failure of Crane to make objection to same, (3) The telegram sent by Crane to Kazanjian under date of October 3, 1944, advising that Crane had "sold for your account basis 2.50 lug net to you, block Emperors mentioned * * *," and (4) The telegram on October 4, 1944, from Kazanjian to Crane stating that "15 cars storage U.S. One Emperors December 10th conversion satisfactory * * *."

22. The District Court erred in failing to conclude that if Crane had not been authorized by Kazanjian to confirm the sale of the 10 cars of grapes, it follows that under Section 2(b)(4) of the Perishable Agricultural Commodities Act, Crane is

liable for the loss sustained by complainants by virtue of his false representation to complainants that such confirmation had been procured.

23. The District Court erred in failing to conclude that if Crane intended that the form known as "Standard Confirmation of Sale" be required for use in confirming said transaction, and if Crane further intended that such "Standard Confirmation of Sale" form be signed by the buyers themselves as distinguished from their Dallas, Texas, broker, and that such form also be signed by the seller himself, it follows that under Section 2(b)(4) of the Perishable Agricultural Commodities Act, Crane is liable to the complainants for failing without reasonable cause to so inform the [230] complainants of such intention.

24. The District Court erred in failing to find from the evidence that Crane, in addition to acting as a procurement broker for complainants, also acted as agent for Kazanjian in various phases of the sale transaction, and in the transmission of offers and counter-offers.

25. The District Court erred in failing to adhere to the rule of law that a broker can and frequently does act as agent for more than one party to a transaction.

26. The District Court erred in failing to adhere to the rule of law which establishes that the measure of damages for breach of contract to deliver goods is determined by the date of delivery under the contract and not the date of the repudiation of the contract.

27. The District Court erred in failing to find from the evidence that the authority orally vested in Crane by Kazanjian on October 2, 1944, to confirm the sale to complainants was subsequently ratified in writing by Kazanjian on October 4, 1944, in a telegram from Kazanjian to Crane.

28. The District Court erred in rendering extrajudicial findings unnecessary to the decision of the Court and expressly made for the purpose of discouraging complainants from appealing from the District Court decision.

29. The District Court erred in holding that a secret and unexpressed intention on the part of Crane as broker that a special form known as "Standard Confirmation of Sale" was required for the purpose of consummating the sale, was binding upon the complainants despite the absence of any evidence that complainants or their agent Southwest Brokerage Company had ever been informed of such unexpressed intention.

30. The District Court erred in finding from Crane's testimony alone that Crane harbored the intention that a "Standard [231] Confirmation of Sale" was necessary to consummate the sale, despite the contradiction by testimony of Crane himself in the proceedings before the Secretary of Agriculture and in depositions introduced into evidence wherein Crane testified that he considered the Standard Memorandum of Sale sent to him by Southwest Brokerage Company as a sufficient confirmation of the sale.

31. The District Court erred in failing to make findings of fact as to whether the telegrams from Crane to Southwest Brokerage Company under date of October 10, 1944, October 12, 1944, and October 16, 1944, had been authorized by Kazanjian.

32. The District Court erred in failing to give consideration to objections which were filed by complainants to the Findings of Fact and Conclusions of Law as proposed by the respondents.

33. The District Court erred in that the findings of fact herein are not supported by the evidence.

34. The District Court erred in that its decision is contrary to law.

35. The District Court erred in denying complainants' motion for new trial.

36. The District Court erred in making an order denying complainants' application for permission to orally argue their motion for new trial herein.

This 27th day of February, 1951.

J. MANUEL HOPPENSTEIN

and

HARRY A. PINES,

By /s/ HARRY A. PINES,

Attorneys for Central Fruit and Vegetable Co. and
West Texas Produce Company, Complainants
and Appellees Herein.

Affidavit of Service by Mail attached.

[Endorsed]: Filed Feb. 27, 1951. [232]

[Title of District Court and Cause.]

DESIGNATION OF RECORD ON APPEAL

To the Clerk of the District Court of the United States for the Southern District of California, Central Division:

You are hereby requested to prepare, certify and transmit to the clerk of the United States Court of Appeals for the Ninth Circuit, with reference to the Notice of Appeal heretofore filed by complainants in the above cause, transcript of the record in the above cause, prepared and transmitted as required by law and by rules of said court, and to include in said record the following documents, or certified copies thereof, to wit:

1. Notice of Appeal from Reparation Order of Secretary of Agriculture filed in the District Court May 21, 1948.

2. Petition setting forth proceedings before the Secretary of Agriculture and grounds upon which petitioner relies to defeat [234] right of complainants to recover damages, filed May 21, 1948.

3. Certified copy of proceedings before the Secretary of Agriculture, filed in the District Court July 30, 1948.

4. Amended answer of Raymond M. Crane filed October 25, 1950.

5. Trial brief of Raymond M. Crane filed November 25, 1949.

6. Trial brief of complainants filed July 6, 1950.
7. Trial brief of John C. Kazanjian filed July 8, 1950.
8. The evidence and proceeding at the trial which were stenographically reported by Agnar Wahlberg, covering proceedings held July 11, 12, and 13, 1950.
9. All exhibits filed in this case.
10. Objections of complainants to proposed Findings of Fact and Conclusions of Law, filed October 11, 1950.
11. Findings of Fact, Conclusions of Law and Judgment, filed October 11, 1950.
12. Motion for new trial of complainants filed October 20, 1950.
13. Notice of motion to set date of hearing upon motion for new trial and to grant oral arguments thereon.
14. The proceedings held November 6, 1950, on hearing of complainants' motion to set a date of hearing for the motion for new trial and to grant oral arguments thereon, which proceedings were stenographically reported by Agnar Wahlberg.
15. Minute order of November 6, 1950, relating to complainants' motion to set hearing for motion for new trial and to grant oral arguments thereon.
16. Minute order denying motion for new trial, filed January 16, 1951.

17. Notice of Appeal by Central Fruit and Vegetable Co. and West Texas Produce Company filed February 13, 1951.

18. Undertaking on appeal filed on February 15, 1951, by Central Fruit and Vegetable Co. and West Texas Produce Company. [235]

19. Statement of Points Intended to be Relied upon on Appeal, filed herewith.

20. This Designation of Record.

Pursuant to the provisions of Rule 75 (o) of the Rules of Civil Procedure and pursuant to Rule 11 of the Rules of the United States Court of Appeals for the Ninth Circuit, as amended, request is hereby made that the Clerk of the above-entitled court transfer all the original papers in the file dealing with the action or the proceedings in which the appeal has been taken.

Dated: This 27th day of February, 1951.

H. MANUEL HOPPENSTEIN
and
HARRY A. PINES,

By /s/ HARRY A. PINES,
Attorneys for Central Fruit and Vegetable Co. and
West Texas Produce Company, Complainants
and Appellees in the District Court, and Ap-
pellants in the United States Court of Appeals
for the Ninth Circuit.

Affidavit of Service by Mail attached.

[Endorsed]: Filed Feb. 27, 1951. [236]

In the United States District Court, Southern
District of California, Central Division

No. 8244-PH Civil

CENTRAL FRUIT & VEGETABLE CO. and
WEST TEXAS PRODUCE COMPANY,
Complainants and Appellees,

vs.

ASSOCIATED FRUIT DISTRIBUTORS OF
CALIFORNIA and RAYMOND M. CRANE,
Respondents and Appellees,

vs.

RED LION PACKING COMPANY and JOHN
C. KAZANJIAN,
Respondents and Appellants.

Honorable Peirson M. Hall, Judge, Presiding.

REPORTER'S TRANSCRIPT OF
PROCEEDINGS

July 11, 1950.

Appearances:

For Complainants and Appellees:

HARRY A. PINES, ESQ.,

975 Subway Terminal Building,
Los Angeles 13, California; and

J. MANUEL HOPPENSTEIN, ESQ.

Southwestern Life Building,
Dallas 1, Texas.

For Respondent and Appellee John C. Kazanjian, dba Red Lyon Packing Company:

AYNESWORTH & HAYHURST,

1012-1020 Helm Building,

Fresno, California; by

L. NELSON HAYHURST, ESQ.

For Respondent and Appellant Raymond M. Crane, dba Associated Fruit Distributors of California:

HENRY O. WACKERBARTH, ESQ.,

601 F. P. Fay Building,

Los Angeles 13, California.

* * *

Mr. Hoppenstein: Under the statute the decision of the Secretary of Agriculture and certification of his record, which is before your Honor, creates a prima facie case in favor of Central Fruit & Vegetable Company and the West Texas Produce Company.

The Court: I read the statute and it says that they should be prima facie taken as true.

Mr. Hoppenstein: That is right, with the burden then shifting to the persons appealing.

The Court: If that is agreeable. [12]

* * *

Mr. Hoppenstein: Your Honor, at this time I offer a certification of the proceedings from the United States Department of Agriculture, which

includes the complaint in PACA Docket No. 4589, entitled Central Fruit & Vegetable Company and West Texas Produce Company, complainants, v. Raymond M. Crane, doing business as Associated Fruit Distributors of California and John C. Kazanjian, doing business as Red Lion Packing Company, respondents, with Exhibits Nos. 1 to 6, inclusive, attached, being the answer of the respondent John C. Kazanjian, doing business as Red Lion Packing Company; answer of respondent Raymond M. Crane, doing business as Associated Fruit Distributors of California, and preliminary statement, findings of fact, conclusions, and order, dated April 23, 1948, by Thomas J. Flavin, Judicial Officer, certified by Charles W. Bucy, Associate Solicitor, under the direction of the Secretary of Agriculture and sent under the seal of the Department of Agriculture.

You have seen these?

Mr. Wackerbarth: Yes.

The Court: Is there any objection?

Mr. Hayhurst: No objection. [15]

The Court: Complainants' Exhibit No. 1 in evidence.

(The documents referred to were received in evidence and marked Complainants' Exhibit No. 1.)

Mr. Hoppenstein: Now, if your Honor please, the next offer in evidence as an exhibit is the deposition of John C. Kazanjian, taken by Central Fruit & Vegetable Company and West Texas Produce Company, as an adverse party under the rule of

the taking of testimony of an adverse party, taken on April 28, 1950, at 2:00 o'clock p.m.

The Court: That was taken in this case after it was filed?

Mr. Hoppenstein: After it was filed; yes, your Honor.

The Court: I see.

Mr. Hoppenstein: Now if your Honor intends—and I am sure the court will—to read the deposition we will not burden the court at this time with reading the questions and answers unless the court at this time would like to hear it.

The Court: It is immaterial to me. One way or the other. You are offering it?

Mr. Hoppenstein: We are offering it in its entirety.

The Court: If you offer it, I shall read it unless there is some insistence that it shall be read.

Mr. Hayhurst: We thought that it would be for the court's convenience better to offer them as exhibits and then the court can spend what time it may have available when it [16] has time available.

The Court: Very well. That is Complainants' Exhibit No. 2, the deposition of John C. Kazanjian.

(The document referred to was marked Complainants' Exhibit No. 2 and received in evidence.)

Mr. Hoppenstein: As Exhibit No. 3 we offer in evidence as an exhibit a deposition of the adverse party Raymond M. Crane, taken at Los Angeles,

California, on Friday, April 28, 1950, at 2:00 o'clock p.m., which deposition is not signed but which counsel for Mr. Crane stipulates may be introduced as his testimony.

* * *

The Court: Is there any objection? (No response.)

It is in evidence as Exhibit No. 3.

(The deposition of Raymond M. Crane was marked Complainants' Exhibit No. 3 and received in evidence.)

Mr. Hoppenstein: Your Honor please, I would like to be sworn to testify with reference to attorney fees. [17]

* * *

J. MANUEL HOPPENSTEIN

called as a witness by and on behalf of the complainants, having been first duly sworn, was examined and testified as follows:

The Clerk: Your name, please?

The Witness: J. Manuel Hoppenstein; H-o-p-p-e-n-s-t-e-i-n.

The Clerk: And your address?

The Witness: 1010 Southwestern Life Building, Dallas, Texas. [18]

* * *

Cross-Examination

By Mr. Hayhurst:

* * *

Q. I have a photostatic copy of the examiner's

(Testimony of J. Manuel Hoppenstein.)

report that is marked received May 19, 1947, in the office of the [27] solicitor. Would that be approximately the correct date? May I show you this to refresh your memory? A. Yes, please.

(The document referred to was passed to the witness.)

* * *

Mr. Hayhurst: We might offer this in evidence just to clarify some of these dates.

The Court: Do you limit it for that purpose, or do you offer it in evidence generally?

Mr. Hayhurst: We will offer it in evidence generally for any purpose that anyone may desire to use it for.

Mr. Pines: We would object to it on the ground that it is incompetent, irrelevant, immaterial, and hearsay; and furthermore that it is not part of the proceedings in this court or before the court below, and has no proper place in this case except for the limited purpose that counsel wishes to offer it for. [28]

* * *

The Court: The objection to the admissibility is overruled. It will be admitted in evidence for all purposes.

* * *

(The document referred to was marked Respondents' Exhibit A and received in [30] evidence.)

* * *

Mr. Hoppenstein: We offer in evidence as an exhibit the deposition of Joe Mosesman.

* * *

The Court: Is there any objection? (No response.)

The Court: That will be Exhibit No. 4 in evidence.

(The deposition of Joe Mosesman was marked Complainants' Exhibit No. 4 and received in evidence.)

Mr. Hoppenstein: We offer in evidence as an exhibit a certified copy from the Secretary of the Department of Agriculture of the testimony heard at the hearing on February 19, 1947, which includes all the exhibits received as evidence with the exception of Exhibit No. 2, report of [36] investigation, and Exhibit No. 3, the complaint, which as I understand it, are already part of the transcript of the record filed by the Secretary of Agriculture. [37]

* * *

The Court: Very well. In evidence.

(The documents referred to were marked Complainants' Exhibit No. 5 and received in evidence.)

Mr. Hoppenstein: Central Fruit & Vegetable Company and West Texas Produce Company rest, your Honor. [38]

* * *

HARRY BOCKSTEIN

called as a witness by and on behalf of the respondents under Rule 43(b), having been first duly sworn, was examined and testified as follows:

The Clerk: Your name, please?

The Witness: Harry Bockstein.

The Clerk: Your address? [41]

* * *

The Witness: Fort Worth.

* * *

Direct Examination

By Mr. Wackerbarth:

Q. Mr. Bockstein, you are a member of the partnership of the West Texas Company?

A. West Texas Produce Company; yes, sir.

Q. How long have you been connected with that company? A. Ever since it started.

Q. When was that?

A. Well, the West Texas Produce Company was started in 1926, but before that I was in partners with the same party before, since 1940. [42]

* * *

Q. How long have you been in the produce business? A. Since 1905.

* * *

Q. And after you were informed that Kazanjian, or Red Lion, would not deliver this fruit, I understand that you made some efforts to buy fruit?

A. Yes.

* * *

(Testimony of Harry Bockstein.)

Q. And you bought a carload of fruit from Nash-De Camp Company? A. Yes.

* * *

The Court: Did you buy a carload of fruit? [43]

The Witness: I bought some from a lot of people.

The Court: Grapes?

The Witness: Grapes, yes, sir. I bought a lot of grapes.

Q. (By Mr. Wackerbarth): I am saying, after they informed you that they were not going to deliver this fruit, did you go out and buy some grapes?

A. Yes. I bought some, not for that purpose; I bought some to use right now. I didn't buy them for storage.

Q. You did buy some grapes?

A. Yes, I bought a lot of them.

Q. Did you buy a carload of grapes from the Nash-De Camp Company on October 31, 1944?

A. I don't remember exactly, but I bought from plenty of other people too. [44]

* * *

Q. Now, I show you, Mr. Bockstein, from the deposition here a copy of an invoice of Nash-De Camp Company. Does that represent the carload of Emperor grapes that you purchased on October 31, 1944?

A. Yes, I bought that. That is an invoice.

Q. And those were purchased by you after you

(Testimony of Harry Bockstein.)

were informed that the Red Lion would not ship this fruit, isn't that correct?

A. Well, Red Lion was not supposed to ship those fruit and I wasn't supposed to get that fruit until December 11th.

The Court: No, his question is whether or not you bought those after you were informed they would not ship.

The Witness: I don't remember exactly because I don't [45] remember exactly the date, but I was informed that I wasn't going to get it, but I continued buying grapes right all the way through the season, buying one at a time, not for storage but to to use right now.

Here is a bill over here that I bought from C. H. Robinson Company on January 22nd and what I paid.

Q. When were you informed that the Red Lion would not ship this fruit, these grapes?

A. I don't remember exactly.

* * *

Q. After you were informed that Red Lion would not ship these grapes, what did you do about buying other grapes?

A. I tried to buy some from other people.

Q. I asked you, what did you do?

A. I kept on buying grapes.

Q. Did you buy a carload of grapes from Nash-De Camp Company?

A. I don't know.

Q. You see an invoice there, don't you? [46]

A. Yes, I guess I did. Here is the invoice.

(Testimony of Harry Bockstein.)

Q. Do you know how much you paid a box for those grapes?

A. Here is the bill right here; \$3.50.

Q. And that is the amount which you paid for them at that time?

A. It is the amount I paid for that car.

Q. What other companies did you try to buy grapes from?

A. I tried to buy some from other brokers. I tried to buy some from Western Fruit Growers.

Q. You did buy from Western Fruit Growers?

A. Yes, I bought one car from them late in the season.

Q. What other brokers did you try to buy from?

A. From C. H. Robinson and Jimmie Teel and W. W. Shipman. I bought from all of them.

Q. What California brokers did you try to buy from? A. I don't remember.

Q. Did you try to buy from any California brokers?

A. I never did have any special connection with California brokers. The brokers in Fort Worth or Dallas are the ones that made the connections. [47]

* * *

Q. Now, do you have here the written authorization that you gave to Mr. Margules or the Southwest Brokerage Company to buy this fruit?

A. What do you mean?

Mr. Pines: That is objected to on the grounds that it is hearsay.

The Court: Objection sustained.

(Testimony of Harry Bockstein.)

When did you first find out from the Southwest Brokerage Company, or when did you first find out that he had made some kind of a deal with Associated? After he mailed you that contract?

The Witness: Well, he talked to me before.

The Court: He talked to you before?

The Witness: To get my authority to make that deal. [49]

The Court: Did you ever give him any written authority?

The Witness: Well, I never did on anything.

The Court: You never did on anything?

The Witness: No, sir. I just talked to the broker over the telephone and then he sent me a confirmation and he signed it himself.

The Court: You never signed anything?

The Witness: No, sir. I never did on any of them.

The Court: Either to him or to anybody?

The Witness: Or to anybody else. That is the way business has been done all the time.

* * *

JOHN C. KAZANJIAN

called as a witness by and on behalf of the respondents under Rule 43(b), having been first duly sworn, was examined and testified as follows:

The Clerk: What is your name?

The Witness: John C. Kazanjian.

The Clerk: Your address?

The Witness: Exeter, California. [50]

(Testimony of John C. Kazanjian.)

Direct Examination

By Mr. Wackerbarth:

* * *

Your Honor, we are calling him as an adverse witness also.

The Court: That is as to Crane, Associated?

Mr. Wackerbarth: Yes, your Honor.

The Court: Very well.

Q. (By Mr. Wackerbarth): Mr. Kazanjian, on the question of availability of Emperor grapes during the months of October, November and December, of 1944—I am going to direct my questions to along that line—what was your business occupation during the months of October, November and December, of 1944?

A. In October and November, up until November 10th, harvesting and packing and shipping grapes.

Q. And did you raise Emperor grapes?

A. Yes, I did.

Q. And did you raise the grapes that were involved, or would have been involved in this controversy had they been shipped? A. Yes, I did.

Q. As I understand it, up to October 10th there was a [51] ceiling covering these grapes?

A. That is right.

Q. After the ceiling was lifted, which I understand to be October 10th, were there other Emperor grapes available in the California markets?

A. Yes, there were.

(Testimony of John C. Kazanjian.)

Q. And in what markets were Emperor grapes available, in California?

A. Well, I had a lot to sell. We were selling them every day. Part of it was going into storage but the major portion of it was offered to the trade at the time of packing.

The Court: You mean there were grapes for sale outside of yours?

The Witness: Yes.

Q. (By Mr. Wackerbarth): What other companies or what other packing houses or vineyards, producers, do you know of in California that had Emperor grapes to sell during the months of October, November and December, of 1944?

A. Well, during October and up until part of November I imagine there was over 120 cars shipped out of Exeter alone per day.

The Court: At what other places were Emperor grapes for sale? [52]

* * *

A. Well, Growers Service in Exeter, Red Banner was packing and selling, Nash-De Camp, Cameo Vineyards located in Terra Bella, Sadoian Bros. and Anderson in Dinuba, Diamond K. Vineyard in Exeter, Bingham Holdings in Exeter, C. H. Brunner in Exeter, Allison-Brunner in Exeter—I could go on for 15 minutes more.

Q. (By Mr. Wackerbarth): To your knowledge did each and every one of these concerns that

(Testimony of John C. Kazanjian.)

you have mentioned have red Emperor grapes for sale during those periods of time?

A. To my knowledge every one of them had.

The Court: What is the period?

Mr. Wackerbarth: October, November and December of 1944.

The Witness: Now, I don't know what they had after the middle of November. The remarks I am making cover up to the middle of November because some of them finished packing at the middle of November and from there on they had [53] storage grapes. Now, how many of these firms I mentioned put grapes in storage I couldn't tell you now. But up until the middle of November there were fresh shipments going out and all these firms had grapes for sale.

Q. (By Mr. Wackerbarth): Do you know of any concerns that did put grapes in storage?

A. Yes, I do.

Q. During this time? A. Yes, I do.

Q. What companies put grapes in storage—and I have been referring to Emperor grapes?

A. Well, I would say almost every one of these that I mentioned had some portion of their grapes in storage. As a general practice they ship about two-thirds fresh and about one-third of it generally goes into storage. They gamble. In other words, there is quite a risk when you go into storage and they won't risk but about a third of their output in storage.

(Testimony of John C. Kazanjian.)

Q. That is cold storage? A. Yes.

Q. Now, do you know what red Emperor grapes were selling for per lug during the month of October, 1944, at Exeter?

The Court: Free on board? [54]

Q. (By Mr. Wackerbarth): F.o.b.?

A. We were getting around \$3.25 f.o.b. Exeter.

Q. During what period of time were you getting \$3.25 f.o.b. Exeter?

A. All the time that there were fresh shipments.

Q. And that was up to what date?

A. Up until the middle of November. The prices didn't go up until way late in storage.

The Court: What do you mean by "way late"?

The Witness: I mean about January and on; about the middle of January.

Q. (By Mr. Wackerbarth): Do you know what red Emperor grapes were selling for during the month of November, the latter half of November and the fore part of December, up as late as December 10th, red Emperor grapes that had been placed in storage—do you know what they were selling for in the Exeter district?

A. I would say about \$3.50.

Q. Do you know of any that were for sale at that time that had been placed in storage?

A. Well, a neighbor of mine, who is also a grower-shipper, Cameo Vineyards, I know they had some in storage. As a matter of fact, he went into storage in this same plant that we were contemplating going into storage. I know he had [55]

(Testimony of John C. Kazanjian.)

some grapes there. And there were grapes in all the storage plants.

The Court: For sale?

The Witness: For sale.

* * *

Q. (By Mr. Wackerbarth): Where grapes are customarily stored in California, placed in cold storage in California, what varieties of grapes are customarily placed in cold storage in California?

A. Well, in recent years they have tried all varieties, but the Emperors have been the major variety to go into storage.

The Court: You mean they have better keeping qualities?

The Witness: They have better keeping qualities. [56]

* * *

Q. (By Mr. Wackerbarth): It was your understanding of this contract, was it not, that these grapes were to go in storage?

A. If the contract was consummated; yes, we were going to go into storage.

Q. And that they were to come out of storage about [57] December 10th? A. That is right.

Q. And the grade of grapes going into storage was to be U. S. No. 1? A. That is right.

Q. By the way, how long have you been raising grapes and selling them?

* * *

A. Well, close to 30 years.

(Testimony of John C. Kazanjian.)

Q. How long have you engaged in the business of storing grapes for cold storage?

A. About 10 years.

Q. What has been your experience, or what is the experience of the trade generally in California and in the Exeter district, with reference to grapes going into storage as U. S. No. 1 and coming out of storage as U. S. No. 1? [58]

* * *

Q. Have you had any such experience?

A. Yes, I have had considerable experience. We all know that there is quite a bit of deterioration in storage, and of course a lot depends on the more you hold it, the longer you hold it, the greater the risk, but there is considerable deterioration. Three years ago I went into storage with 32 cars and came out with 5 cars, and lost 28 cars out of the 32. Now, that is way above average, but we have losses, considerable losses, over a period of years.

Q. Has it been your experience and has it been the experience of the trade in general in the Exeter district that a carload of grapes which goes in as U. S. No. 1, graded U. S. No. 1, will come out graded U. S. No. 1?

A. No, I have seen grapes go into storage that graded Fancy, which is above U. S. No. 1, that ended up in a winery because they spoiled.

It all depends on climatic conditions, maturity of the grapes—as a matter of fact, it is hard to tell just what it is, but sometimes you go into grapes

(Testimony of John C. Kazanjian.)

that look excellent, that go into storage, and you end up dumping them in the juice truck and sometimes Fair grapes hold up. It is hard to tell just why it is, but there is a big element of risk in [59] going into storage. That is why the ones that survive and come out always bring a premium to offset the damages done to those that fall along the wayside.

Q. Now, I will ask you if you have any recollection of the growing season of the year 1944, with reference to the Exeter district?

A. You mean in relation to keeping quality?

Q. I am going to get to that in a minute, but what I am directing your attention to particularly now is, do you know whether or not during the year 1944, on or about the 30th day of September of that year and on the first day of October of that year, whether or not there was a rainstorm in the Exeter district?

A. Well, ordinarily I wouldn't remember it, but I have checked into it and I know that it did rain that season.

Q. And did it rain on these grapes shortly before they were picked? A. Yes, it did.

Q. What has been your experience, and what has been the experience of the trade in general in the Exeter district, with reference to the keeping qualities of Emperor grapes in storage where they are placed in storage after they have been rained on?

(Testimony of John C. Kazanjian.)

A. They generally don't keep as well after they have been rained on. [60]

Q. That is, they don't hold up?

A. They don't hold up in storage as well.

Q. Now, is there a difference, Mr. Kazanjian, between the value of Emperor grapes in storage in October, U. S. No. 1s, and the value of U. S. No. 1s as of December 10th when, under the terms of this contract, they were to come out of storage?

A. I did not understand that question.

Q. Maybe I haven't made it clear?

You have heretofore testified that there is no assurance that U. S. 1s going into storage as U. S. 1s will come out the same way? A. That is right.

Q. Now, using that as a basis, I want to ask you whether or not you have an opinion as to the value of grapes as of December 10, 1944, that were U. S. 1s at the time they went in storage in October, on or about October 9, 1944; would you have any opinion as to the value of those grapes at the latter part, to wit, December 9, 1944?

A. Not at all. It would entirely depend on how they come out of storage.

Q. Then if the grapes that went in as U. S. 1s were moldy at the time they came out of storage, they wouldn't grade U. S. 1, would they?

A. No. [61]

Q. What in your opinion was the value, the market value, of grapes grading U. S. 1 as of December 9, 1944, at Exeter f.o.b. cars?

(Testimony of John C. Kazanjian.)

The Witness: I would say around \$3.50.

Q. Do you know whether or not there were grapes available for sale at that time?

A. I know there was.

The Court: U. S. 1s?

The Witness: Yes—Well, now, wait a minute. They would have to grade them before they are sure they are U. S. 1s.

* * *

Mr. Wackerbarth: Yes, I am assuming that they would meet a government inspection of U. S. 1.

The Witness: Well, now, all the grapes wouldn't have graded out of storage on December 9th, but I imagine a considerable portion of them would, and there was a lot of grapes in storage. [62]

* * *

Cross-Examination

By Mr. Hayhurst:

Q. Did you put in any Emperor grapes in storage in 1944 at all, Mr. Kazanjian?

A. No, I did not.

Q. And all of the grapes which you produced you packed and shipped yourself?

A. Yes, I did. [63]

* * *

Cross-Examination

By Mr. Pines:

* * *

Q. Are you familiar with the sales of U. S. Emperor grapes No. 1, inspected U. S. government

(Testimony of John C. Kazanjian.)

inspected, out of Exeter, California, between October 10, 1944, and December 10, 1944, ranging from \$4 to \$4.50 and \$5 per lug?

A. What was the range there in dates?

Q. The variable fluctuations that went as high as from \$4 to \$5 or more.

A. I mean the dates.

Q. Between October 10, 1944, the date that the ceiling price on grapes was lifted, and December 10, 1944, when these grapes were to be delivered out of storage.

A. No, I never heard of \$5 prices or anywhere near it. [67]

* * *

Q. What was the highest price that you are aware of that Emperor grapes, U. S. No. 1 inspection, sold out of Exeter, California, between October 10, 1944, and December 10, 1944?

A. Unless there was an exceptional pack, just a regular commercial U. S. 1 pack, I don't think there was any sales made over what I would say the range would have been, \$3.50 to \$3.75 at the most.

Mr. Pines: I move to strike the answer as not responsive to the question and that the witness be directed again to answer the question.

The Court: I think he has answered it.

Mr. Pines: He said except for an exceptional pack. I asked him what was the highest amount he was aware of that those grapes were sold for.

The Court: He said that for the usual run of

(Testimony of John C. Kazanjian.)

U. S. 1, and an exceptional pack would not be a U. S. 1, would it? [68]

The Witness: Well, yes, there are speciality packers, like Leonard Bros. in Fresno, and they will spend three times as much to grow their fruit and three times as much to pack it, and they get a premium for their grapes, but that is not an average commercial pack. I have seen them get \$6 a lug when the average price was \$2 or \$2.50 because he has something that is outstanding. That is what I had in mind when I said exceptional pack.

The Court: The exceptional pack, what did they sell for during this period?

The Witness: I don't know, but I say the commercial, what I mean by commercial brands, people that pack in volume, and normally what you would call U. S. 1 would be \$3.50 to \$3.75.

Q. (By Mr. Pines): You sold uninspected Emperor grapes during this period between October 10th and December 10, 1944 for \$3.25 and \$3.50, did you not?

A. Those are the records you want me to get, aren't they? I would rather wait and have the actual records. [69]

* * *

July 12, 1950; 10:00 A.M.

Mr. Wackerbarth: Yes, sir.

This motion probably should have been made yesterday at the conclusion of the plaintiff's case. However, I take it that under Rule 41, Subdivision (b)——

The Court: You can make it at any time.

Mr. Wackerbarth: —you can make it at any time.

The plaintiff now having closed its case, at this time I move to dismiss this action or proceeding as against Raymond M. Crane, doing business as Associated Fruit Distributors of California. Up to this point of time, your Honor, the plaintiffs have introduced as the basis of their proceeding against Crane and others the findings of the Department. Now while at this present time——

The Court: They have introduced the findings but they [74] have also introduced all of these depositions.

Mr. Wackerbarth: That is correct.

The Court: And testimony. I think that if you are going to make your motion I should probably pass on the admissibility of the evidence first? [75]

* * *

Mr. Wackerbarth: Now, in this particular instance, your Honor, Raymond M. Crane, my motion is to dismiss as to him, is shown to have, in my judgment, acted as a broker for the purchaser. [89]

* * *

The Court: Well, without prejudice to your right to renew it I will deny it at this time. I am not clear at this posture of the case whether or not there was an undisclosed principal for whom he was acting. [90]

* * *

Mr. Hayhurst: If the court please, at this time the respondent John C. Kazanjian, doing business

as the Red Lion Packing Company, also moves to dismiss the complaint. [91]

* * *

The Court: I will take your motion under submission and pass on it at the conclusion of the case.

You will proceed with your evidence.

Mr. Wackerbarth: Your Honor, there are a few other questions I would like to ask Mr. Bockstein.

* * *

HARRY BOCKSTEIN

recalled as a witness by and on behalf of the respondents under Rule 43(b), resumed the stand and testified further as follows.

Direct Examination

By Mr. Wackerbarth:

Q. Mr. Bockstein, in connection with the purchase of these grapes, was it your understanding that you were paying the Associated Fruit Distributors \$50 a car as procurement charge? [95]

* * *

The Witness: I understood that I was to pay \$50 a car.

Q. (By Mr. Wackerbarth): And what was your understanding as to why you were paying him \$50 a car?

* * *

The Witness: I was kind of buying brokerage, I guess. [96]

Q. (By Mr. Wackerbarth): You knew that he was procuring these grapes for you, did you not, for the West Texas Produce Company?

(Testimony of Harry Bockstein.)

A. It wasn't definitely specified to me whether he is procuring it or he is acting for the shipper. The only thing I knew, I had to pay \$50 a car to Mr. Crane, to Associated, as a procurement charge.

The Court: When did you first find out about it?

The Witness: When did I first find out about what?

The Court: About that you were to pay \$50 a car.

The Witness: That is the original sale.

The Court: When was that? Was that before October 10th?

The Witness: That was before October 3rd.

The Court: Before October 3rd?

The Witness: Yes, before I got a confirmation. That is when the purchase was made and that is when I give Southwest Brokerage Company instructions to buy. [97]

* * *

Q. (By Mr. Wackerbarth): And you knew that he had to get in touch with Red Lion Packing Company, didn't you, with reference to the sale of the grapes?

A. I don't know what to tell you. The only thing I know is the way the business is done in the produce line. It may be different than in any other line. Whenever a fellow offers you something for sale, and he tells you what it is going to cost you, that is all you are interested to know. You don't go to no details to find out whether this fellow is [103] going to work for you or work for the other fellow.

(Testimony of Harry Bockstein.)

The only thing I knew is what the grapes is going to cost me.

* * *

Q. And you knew that Red Lion owned the grapes on October 2nd, didn't you? A. Yes.

Q. And you knew that Mr. Crane had to contact Red Lion in connection with this sale, didn't you?

A. I didn't know. I thought maybe Red Lion was right at his office at the time. I couldn't tell. I was in Fort Worth and they were in [104] California.

* * *

Q. Now, Mr. Bockstein, I showed you yesterday an invoice from the Nash-De Camp Company.

A. Yes.

Q. When you were informed that Red Lion would not make this shipment, that was one of the carloads that you did buy, wasn't it?

A. I don't remember exactly, but I think that is a carload I bought from them afterwards. I bought it through C. H. Robinson of Fort Worth for \$3.50 plus storage charge.

Q. I am going to ask you to examine this deposition of yours. You recall your deposition being taken, do you not? A. Yes. [106]

* * *

Q. I want to direct your attention to Interrogatories 8 and 9. Now I am going to read to you, Mr. Bockstein, Interrogatory No. 8.

"Please state what quantity of grapes you

(Testimony of Harry Bockstein.)

purchased, and at what prices, in behalf of West Texas Produce Company after you received notice that Red Lion Packing Company and Associated Fruit Growers of California would not carry out their agreement, in an attempt to minimize your damage.”

Now, will you please read your answer?

A. “I purchased on the Dallas market on or about January 14, 1945, 150 lugs of grapes at \$4 per lug; on or about January 22, 1945, I purchased 1098 lugs of U. S. No. 1 Emperor grapes from Zaninovich Brothers, Orange Cove, California, through C. H. Robinson Company, brokers, at a price of \$5 [107] per lug delivered at a total of \$5490 for the car, the freight being \$518.84; on or about January 19, 1945, I purchased from Western Fruit Growers one car of U. S. No. 1 Emperor grapes containing 1105 lugs at \$4.25 per lug, totaling \$4696.25, and this car was divided 553 lugs to Central Fruit & Vegetable Company and 552 lugs to West Texas Produce Company; on or about October 24, 1944, for shipping date December 11, 1944, West Texas Produce Company purchased one car of U. S. No. 1 Emperor grapes containing 1100 lugs from Nash-De Camp Company, Berkeley, California, at \$3.50 per lug, aggregating \$3850, plus storage charges of \$156.25 charges plus insurance in an amount that I can't recall at this time.”

Q. Now, Mr. Bockstein, then these grapes that you did buy here as represented by that answer were what we call replacement grapes for the grapes

(Testimony of Harry Bockstein.)

that Red Lion didn't ship, is that correct?

A. Yes.

* * *

The Court: The long and short of it is, if Red Lion had shipped the grapes you would not have bought those? [108]

The Witness: That is right. I wouldn't have to buy.

* * *

Q. (By Mr. Wackerbarth): Now I want to show you a government inspection certificate in connection with this Nash-De Camp car and ask you if that is a photostatic copy of the inspection certificate which you received.

A. I couldn't tell you. [109]

* * *

Mr. Hoppenstein: We will stipulate that that is.

* * *

Mr. Wackerbarth: I will offer it in evidence at this time, your Honor.

* * *

(The document referred to was marked Respondents' Exhibit C and received in evidence.)

Q. (By Mr. Wackerbarth): You say Mr. Robinson was representing you at this time. I want to show you a telegram to Mr. Robinson from Nash-De Camp Company and ask you if that was one of the telegrams that went to him in connection with this Nash-De Camp purchase.

Mr. Hoppenstein: I will stipulate that it is.

(Testimony of Harry Bockstein.)

The Court: Exhibit D in evidence.

(The telegram referred to was marked Respondents' Exhibit D and received in [110] evidence.)

* * *

Q. That is the draft that was given in payment of this car, wasn't it?

Mr. Hoppenstein: We will stipulate that it was.

Mr. Wackerbarth: We offer that as the next exhibit.

The Clerk: Exhibit E.

(The document referred to was marked Respondents' Exhibit E and received in [111] evidence.)

* * *

Q. (By Mr. Wackerbarth): Did you order any other cars from the Nash-De Camp Company other than the one car you ordered on October 24th?

A. I don't remember. It is six years ago and too far back to remember.

Q. Did Nash-De Camp limit you at all to the one car? A. I believe he has.

Q. Is that telegram the only representations that your broker had from Nash-De Camp with reference to these cars?

A. I wouldn't know.

* * *

Q. Now you did buy another car from Western Fruit, didn't you? A. Yes. [112]

* * *

(Testimony of Harry Bockstein.)

Q. Who represented you in that deal?

A. I don't know if it was in Dallas.

Q. Didn't the Southwest Brokerage represent you in that deal?

A. Maybe so. I don't know. I can't remember.

Q. They were representing you in an effort to try and buy other cars?

A. We bought a lot of stuff through Southwest Brokerage.

Q. Now, I want to show you a telegram, a photostatic copy of a telegram, and ask you if that was a copy of the telegram that was sent to Southwest Brokerage in its effort to get replacement cars for you.

Mr. Hoppenstein: We will stipulate that it was.

The Court: And sent on or about the date it bears?

Mr. Hoppenstein: Yes, sir.

Mr. Wackerbarth: October 24th.

Mr. Hoppenstein: We will so stipulate.

* * *

The Court: Very well. That will be [113] Exhibit F.

(The telegram referred to was marked Respondent's Exhibit F and received in evidence.)

Q. (By Mr. Wackerbarth): Did you or the Southwest Brokerage Company take advantage of the offer made in that telegram for replacement cars?

(Testimony of Harry Bockstein.)

A. I can't remember that far back. I don't remember.

Q. You didn't buy anything from Heggblade-Margules Company, did you?

* * *

A. I don't know. All the dope is there.

* * *

Q. Can you tell us why you didn't take advantage of the offer to sell U. S. 1 grapes to you at that time of \$3.25 [114] a lug? [115]

* * *

Q. But you will state definitely that you did not buy any from Heggblade-Margules for replacement? A. Not for replacement, no, sir.

Q. Was your answer you don't know or you didn't? [116]

A. I didn't buy any from him for replacement. I was asking for grapes to be used in the winter.

Q. Now, my question to you is, why didn't you buy from Heggblade-Margules replacement grapes at \$3.25 a lug when they were offered to you?

Q. I just got through telling you a while ago. It is the same answer. I don't remember why I did. Maybe later on he turned it down. [117]

* * *

Direct Examination

By Mr. Hayhurst:

Q. Mr. Bockstein, you testified that you hadn't authorized the Southwest Brokerage Company in

(Testimony of Harry Bockstein.)

writing to purchase grapes for you and that you hadn't authorized anyone else in writing, is that correct?

* * *

A. That is right.

The Court: And you did not authorize Mr. Crane in writing?

The Witness: That is right.

The Court: What is your company, the West——

The Witness: West Texas Produce Company.

The Court: What is the name of the other one?

The Witness: Central Fruit & Vegetable Company.

The Court: That is owned by somebody [127] else?

The Witness: That is owned by Joe Mosesman and Morris Lipschitz and Mrs. Schwartz.

The Court: That is somebody else besides your company?

The Witness: That is right.

The Court: Did you do the business for the two companies in connection with these grapes?

The Witness: Both of us did; Joe Mosesman and I.

The Court: Both of you did?

The Witness: Yes. We did it together.

The Court: Did his company ever authorize you in writing to purchase these grapes?

The Witness: Well, I bought six cars.

The Court: No, did he ever authorize you?

(Testimony of Harry Bockstein.)

The Witness: No.

The Court: To purchase any grapes for him?

The Witness: No, we never did. Each one of us is authorized to buy from the other one.

The Court: The question is whether or not you authorized in writing.

The Witness: No. [128]

* * *

Q. (By Mr. Hayhurst): Mr. Bockstein, as I understood your answers, you have never authorized anyone in writing to negotiate or enter into a contract with Red Lion Packing Company for the purchase of the grapes that are involved in this controversy? [133]

A. I haven't in writing, but the only thing, the way it is customary to do over there, whenever the broker makes a deal he signs his name on the bottom, and he is my broker and that's it.

Mr. Hayhurst: We ask that the latter part of the answer be stricken.

The Court: The latter part may be stricken beginning with "it is customary."

* * *

The Court: Did you ever give any writing to Crane, either authorizing or approving his making of this contract with you?

The Witness: To Crane?

The Court: Of the supposed contract?

The Witness: In writing?

The Court: Yes.

(Testimony of Harry Bockstein.)

The Witness: No. [134]

The Court: Or to the Southwest Brokerage?

The Witness: No, I haven't.

The Court: Or to the Central Fruit & Vegetable Company?

The Witness: I don't know whether they have or not.

The Court: Very well.

Q. (By Mr. Hayhurst): Did you ever give one to the Red Lion Packing Company? A. No.

Q. Now, you stated, Mr. Bockstein, that you knew that Mr. Crane was selling for the Red Lion Packing Company? A. Yes.

Q. On October 3rd or October 2nd?

A. Yes.

Q. How did you know that?

A. After I seen a confirmation.

The Court: What do you call the confirmation?

Q. (By Mr. Hayhurst): Have you the confirmation here?

The Court: Is it that telegram you are referring to?

The Witness: No, the confirmation of Southwest Brokerage Company. Maybe he told me that over the telephone before he sent me the confirmation, but he sent me the confirmation.

Mr. Hoppenstein: That is the standard memorandum agreement attached to the complaint. [135]

The Witness: Standard Memorandum of Sales.

(Testimony of Harry Bockstein.)

The Court: That is dated October 3rd. When did you receive that?

The Witness: I don't know.

The Court: About when?

The Witness: It couldn't be any later than the 4th, the morning of the 4th, because it couldn't be any later because just from Dallas to Fort Worth is not too far. Maybe I was over in Dallas and got it that same day, I don't know.

Q. (By Mr. Hayhurst): In other words, that was the first notice that you had that Red Lion was involved?

A. Well, I wouldn't say that, but the only thing on that confirmation, that is when I seen Red Lion owned it and maybe I knowed that before. Of course I know Associated did not have the grapes themselves because if they would have had grapes themselves they couldn't charge me the \$50.

Q. You are referring to what is designated on the [136] document as the Standard Memorandum of Sale?

A. Yes, sir.

Q. It is on the heading of Southwest Brokerage Company, Fruit and Vegetable Division, 202-4 Produce Exchange Building?

A. That is right. [137]

* * *

Q. (By Mr. Hayhurst): Now, Mr. Bockstein, did you or any member of your firm ever sign such a Standard Memorandum of Sale?

Mr. Pines: Objected to on the ground that it is

(Testimony of Harry Bockstein.)

immaterial, irrelevant, and doesn't call for the signature of anybody.

The Witness: You don't customarily do that.

The Court: The objection is overruled.

Did you? Did you ever sign it?

The Witness: No.

Q. (By Mr. Hayhurst): Did you or any member of your firm ever sign a Standard Confirmation of Sale, Mr. Bockstein? A. No.

Q. Did you ever forward a confirmation to Red Lion Packing Company, any member of your firm or yourself? A. No.

Mr. Hayhurst: I think that is all.

The Court: Did you ever communicate directly with Associated Fruit Distributors, that is, Mr. Crane?

The Witness: No, sir.

The Court: Or do you know whether or not Central Fruit & Vegetable Company did?

The Witness: No.

The Court: You do not know? [138]

The Witness: No.

The Court: Very well. Do you have any questions?

Mr. Hoppenstein: Yes, your Honor.

Cross-Examination

By Mr. Hoppenstein:

Q. Mr. Bockstein, please state whether or not you ever authorized Mr. Margules of Southwest

(Testimony of Harry Bockstein.)

Brokerage Company to represent you in connection with the ten-car grape transaction?

Mr. Wackerbarth: Just a minute. We object to that on the ground, your Honor, that it is not the best evidence, that Section 2309 of the Civil Code of California provides that such authorization must be in writing, and the question of writing is not incorporated in the question and therefore it wouldn't be a valid representation in California even if he did do it, that is, by an oral authorization. So we object to it on the ground that it is not the best evidence and calling for a conclusion of the witness and immaterial.

Mr. Hayhurst: We join in the same objection.

The Court: The objection is sustained.

Q. (By Mr. Hoppenstein): Mr. Bockstein, did you ever discuss verbally with Mr. Margules of the Southwest Brokerage Company the purchase of six cars of grapes from Associated on or about October 2 or 3, 1944? [139]

Mr. Hayhurst: We object to that on the ground that it would be immaterial and not binding on the respondent Kazanjian, inasmuch as there is no testimony as yet that any such oral conversation, if had, was in the presence of the respondent Kazanjian.

The Court: The objection is sustained as to Kazanjian.

Mr. Wackerbarth: We interpose the same objection as we did before.

The Court: It is hearsay.

Mr. Wackerbarth: It wouldn't be a valid contract. But then I will accept the court's suggestion.

(Testimony of Harry Bockstein.)

The Court: I am not making a suggestion. You can waive it if you wish.

Mr. Wackerbarth: No, your Honor.

The Court: It is hearsay as to both respondents. The objection is sustained.

Q. (By Mr. Hoppenstein): Mr. Bockstein, please state whether or not Mr. Margules of Southwest Brokerage Company was authorized to act in your behalf in transacting business with Associated Fruit Distributors on or about October 2nd or 3rd, 1944?

Mr. Hayhurst: Same objection to the question that was previously asked and ruled upon.

Mr. Wackerbarth: Same objection on behalf of the respondent Crane. [140]

The Court: Same ruling. Objection sustained.

Q. (By Mr. Hoppenstein): Mr. Brockstein, did you receive the standard form memorandum agreement in writing from Mr. Margules on or about October 3rd or 4th, 1944?

* * *

A. Yes.

Q. Did you make any objection, either in writing or [141] verbally, to the terms set out in that instrument?

* * *

A. No, sir.

Q. Mr. Bockstein, at the time you received the memorandum from Southwest Brokerage, please state whether or not West Texas Produce Company

(Testimony of Harry Bockstein.)

was financially able to pay the \$1000 per car deposit for six cars of grapes.

Mr. Wackerbarth: That is objected to as calling for a conclusion of the witness and not the best evidence.

Mr. Hayhurst: Same objection.

The Court: Overruled. [142]

* * *

A. Yes.

Q. Did you have sufficient cash on deposit in the account of West Texas Produce Company?

A. I did.

Q. State whether or not you and West Texas Produce Company were financially able and had the cash available to pay the cost of the ten cars of grapes, six cars of grapes on the basis of \$2.50 per lug and \$50 per car procurement charge to Mr. Crane.

The Court: And 3 cents a lug to——

Q. (By Mr. Hoppenstein): And 3 cents a lug to Southwest Brokerage? Were you financially able? A. I was.

Q. Did the company have the cash on hand?

A. Yes, sir.

Q. Did it have on hand on or about December 10, 1944, the cash? A. Yes.

Q. Have you been ready, willing and able to pay for all the grapes and carry out your part of the terms as set forth in the instrument furnished to you by Southwest Brokerage? [143]

* * *

(Testimony of Harry Bockstein.)

A. I was.

* * *

Q. (By Mr. Hoppenstein): Mr. Bockstein, after you received notice that Red Lion would not ship the grapes did you make any effort to replace the grapes? A. I did.

Q. To whom did you direct your efforts to attempt to [144] replace the grapes?

A. I think it was Jimmie Teel Brokerage Company and one or two other brokers in Forth Worth.

Q. You did make efforts to replace them?

A. Yes.

The Court: That is, did you on or after October 10th—what was the date?

Mr. Hoppenstein: October 19th.

The Court: You fixed no time.

Q. (By Mr. Hoppenstein): On or about or after October 19th?

A. I can't fix no time because I can't remember that far back.

Q. You did make an effort to replace them?

A. Yes. [145]

* * *

July 12, 1950—2:00 P.M.

The Court: I would like to ask him one or two, if I may.

Mr. Bockstein, what was your understanding as to who was going to pay the storage on these grapes between the date of the contract and the date of delivery, December 10th?

(Testimony of Harry Bockstein.)

The Witness: Storage was supposed to be paid by the seller. I am not supposed to get them until December 11th. From then on it is mine. I am supposed to give them \$1000 a car deposit.

The Court: When?

The Witness: Just as soon as I get the U. S. No. 1 certificate. As soon as I get inspection.

The Court: When was it your understanding that that inspection [154] was to be made?

The Witness: Just as soon as they would get the grapes ready.

The Court: As soon as they are in the car?

The Witness: I don't know. When they get the grapes ready.

The Court: Or when they go in storage?

The Witness: I don't know. But when I get a government inspection that is when I was supposed to give them \$1000 for each car and he put it into storage.

The Court: You did not know whether you were to get a government inspection when they were put in storage or when they came out on December 10th?

The Witness: No. I was supposed to get inspection before they go into storage, just when they are loaded in a car, whenever that is.

The Court: What was your understanding about where they were going to be stored? In a freight car?

The Witness: No, they were going to be stored in a cold storage house here in Los Angeles, I think.

(Testimony of Harry Bockstein.)

The Court: Was it your understanding that you were to get that when they were put in storage here or when they were put in the freight car to be shipped to you, that is, that you were to get the certificate?

The Witness: Just as soon as the government man inspects [155] and gives them a U. S. certificate for No. 1. Then I am supposed to pay \$1000. Then on December 11th I am to pay the rest of it.

The Court: Then you had no idea whether or not you were to get that inspection certificate any time between October 3rd, or whatever date it was, and December 10th?

The Witness: That is right.

* * *

Redirect Examination

By Mr. Wackerbarth:

Q. Mr. Bockstein, didn't you understand that the grapes were to go in storage on October 9th, they were to start storing two cars a week commencing October 9th?

A. I don't know. It didn't make no difference to me.

Q. Didn't your agent call that to your attention? The original telegram of October 26th provided that they were to go in storage at that time.

A. Well, the agent is in Dallas and I am at Fort Worth, and I didn't know. The only thing I knew of, I am supposed to give them \$1000 per car when

(Testimony of Harry Bockstein.)

I get a government inspection that they are U. S. No. 1 grapes.

The Court: Then your understanding of the transaction was that set forth in this Standard Memorandum of Sale? [156]

The Witness: That's right. [157]

* * *

The Court: Was it your understanding that the government inspection report was to be made as per each freight car?

The Witness: That is right. That is the way it is supposed to be. Otherwise the government inspector would not inspect.

The Court: What does it mean, "new lidded display lugs"?

The Witness: That is a certain kind of lug like they pack in California.

The Court: It is a special kind of lug?

The Witness: It is a certain lug. It is not a common lug like we use all the time, a grape lug, but it is just different from a tomato lug. Most of them pack it that way, the majority of the grapes at that time.

The Court: Then may I ask this: Was it your understanding that if anything happened to the grapes prior to December 10th that it would not be your loss?

The Witness: Yes, sir, it would have been my loss.

The Court: If they had burned up?

(Testimony of Harry Bockstein.)

The Witness: If they had burned up it would have been my loss; yes, sir.

The Court: Before December 10th?

The Witness: Before December 10th; yes. [158]

The Court: Before the title was transferred to you?

The Witness: When they put them in storage they take out the insurance on them and then it would be protected.

The Court: Very well.

Q. (By Mr. Wackerbarth): Did you ever see the original telegram that Mr. Crane sent to Southwest Brokerage in which these grapes were offered for sale? A. I don't remember.

Q. I will show you a photostatic copy of the telegram. That is just a list of the parties to whom it was sent.

The Court: Which one is that now?

Mr. Wackerbarth: The September 26th telegram, your Honor.

The Court: That is the September 26th telegram which starts out with, "Can book Emperors 9 cars"?

Mr. Wackerbarth: Yes, your Honor.

* * *

The Witness: I don't remember if I have seen that or [159] not. I imagine I haven't because I was in Forth Worth.

Q. (By Mr. Wackerbarth): Mr. Margules told you about it, didn't he? A. Yes.

(Testimony of Harry Bockstein.)

Q. And told you what offer he had had?

A. Yes.

Q. Now I want to direct your attention to these words of the telegram:

“Can Book Emperors Nine Cars U. S. 1, Nine Cars Unclassified or Eighteen Cars Vineyard-Run. Grade to Go Into Storage Packing to Commence Rate of One or Two Daily, October Ninth.”

Now it was your understanding that they were going to start putting them into storage on October 9th, wasn't it?

A. I tell you I didn't take very much interest in it, the date they were supposed to go into storage, because I wasn't going to get them until December 11th anyway.

Q. You knew that they were to be inspected as of the day they went into storage?

A. That is right. They were inspected the day they were to go into storage.

Q. Not inspected the day they came out of storage?

A. No, sir. All the storage risk is ours. [160]

* * *

The Court: I would like to ask a question. With relation to the telegram of October 2nd sent by Associated to Southwest Brokerage, which reads as follows:

“Secured Red Lion Packing Company Confirmation Ten Cars Grapes. As Outlined, You

(Testimony of Harry Bockstein.)

Collect Deposits to Be Forwarded to Us Soon
DUPJA Wired Each Car."

Mr. Wackerbarth: "DUPJA" is a code word that means government inspection.

The Court: This is what I do not understand: "Soon as Government inspection wired each car."

Mr. Wackerbarth: As soon as government inspection is wired to them as to the contents of each car. [161]

* * *

JOHN C. KAZANJIAN

recalled as a witness by and on behalf of the respondents under Rule 43(b), having been previously duly sworn, resumed the stand and testified further as follows: [162]

Redirect Examination

By Mr. Wackerbarth:

* * *

Q. Did you find any records at all, Mr. Kazanjian? A. Yes, I did.

Q. And what records did you find?

A. I found a complete record on all the sales of Emperors, the car numbers, the sale numbers, the check numbers and the party that sold it. It is a complete record.

The Court: During what period?

The Witness: During the Emperor harvest season of 1944. [163]

* * *

(Testimony of John C. Kazanjian.)

Q. (By Mr. Wackerbarth): Will you please produce them in court?

A. (Producing documents.)

The Court: Those are the records of your sales?

The Witness: Yes.

Q. (By Mr. Wackerbarth): Will you please show us the records that you have of the sales commencing October 9th? [164]

* * *

Q. Now I will show you a document, which I will mark G-1. What is that, Mr. Kazanjian?

A. That is a summary of all the sales made from October 10th to October 30th, which include all the days and all the cars, all the days that I packed grapes and all the cars of Emperor grapes that were packed for that season, for the season of '44.

* * *

The Court: Was that prepared from your records?

The Witness: Yes.

The Court: By someone in your employ?

The Witness: By my bookkeeper.

The Court: Is she under your direction and control?

The Witness: Yes.

The Court: In the ordinary course of business, was that [165] prepared?

The Witness: Yes.

The Court: You did not prepare it just last night?

(Testimony of John C. Kazanjian.)

The Witness: No, it was prepared in—it was two years ago. It was prepared for the Denunzio case.

The Court: Very well.

Q. (By Mr. Wackerbarth): Do you have the supporting documents here that go to support those records?

A. I have some, but it is not complete. I drove all the way back yesterday to get these records. Now this was prepared for the Denunzio case and we couldn't locate the originals. Whether it went in on the Denunzio case or not, I don't know. But I have five inspection certificates, I have nine account sales reports from Associated Fruit, and there is one invoice complete, but the rest of them I couldn't locate. [166]

* * *

The Court: While you are looking through that, I will ask the witness a question on another subject.

You testified you had been in the grape business for some years and had stored from time to time?

The Witness: Yes, I have.

The Court: What is the storage rate? Is it per crate or per square foot or per ton or what?

The Witness: No, it is per package.

The Court: Per package?

The Witness: Yes. [167]

The Court: When they are put in cold storage for the market they are crated first, are they?

(Testimony of John C. Kazanjian.)

The Witness: Yes, they are.

The Court: Then what is the storage rate per package?

The Witness: It is generally about 7 cents going in and 5 cents a month thereafter.

The Court: So that the storage rate on these grapes would have been 12 cents—no, it would have been more than that—it would have been for October, November and December. That would be two months?

The Witness: They charge you a full month when it is part of a month, so it would be for October, November and December.

The Court: 15 cents plus 7 cents, or 22 cents a crate storage to make delivery of these on December 10th?

The Witness: That is right.

Mr. Pines: May I suggest we are speaking of lugs rather than a crate?

The Court: A lug.

The Witness: A lug. [168]

* * *

Mr. Wackerbarth: Now we offer this tabulation in evidence as a tabulation by the witness of his sales for the [170] period covered by the tabulation.

The Court: Admitted.

The Clerk: That is Exhibit G-1.

(The tabulation referred to was marked Respondents' Exhibit G-1 and received in evidence.)

* * *

(Testimony of John C. Kazanjian.)

Mr. Wackerbarth: We will offer these for identification at this time so that they may be gone into in detail.

The Court: Very well.

Now on this document it says 296, 297, 296, etc. Is that the price per crate?

The Witness: Per package.

The Court: Is that a lug?

The Witness: A lug. I worked that out last night. That part of it I worked out last night, but the typewriting was already in my files.

The Court: Very well. Had you finished?

Mr. Wackerbarth: Yes, your Honor.

The Court: In view of the depositions of this witness [171] there are some questions that were touched on there and I would like to ask him, subject to any objection counsel might have.

Mr. Crane testified in his deposition that he talked to you on the telephone about October 2nd or 3rd and then sent you a wire that he had sold—well, this wire here, which is not identified by an exhibit number but it is the wire of October 3rd addressed to you, addressed to Red Lion at Exeter, and you testified that you talked to him. Was there any discussion in that telephone conversation between you and Mr. Crane concerning storage or the payment of storage?

Does anybody want to object to the question? (No response.)

Did you have any conversation with him concerning storage and who was going to pay for it?

(Testimony of John C. Kazanjian.)

The Witness: We had been discussing this storage deal for about two weeks. Now whether we discussed it on the 2nd or 3rd I couldn't honestly say, but we had been discussing this for some time, and we had discussed the method of payment. I insisted on payment in Exeter at the time of packing. In other words, I wanted that \$1000—originally it was supposed to be all cash in Exeter.

The Court: I am just talking now about the storage, whether or not you had any discussion there concerning that. You do not recall whether you did or not? [172]

The Witness: You mean the storage fee?

The Court: Yes.

The Witness: On the storage fee, it was supposed to be paid by either Crane or myself. We never settled who was going to pay. I mean, eventually it was going to be charged to me, but whether he was going to pay that——

The Court: In your wire to him of October 4th, you say "you to arrange for storage as agreed." He mentions nothing about storage in his other wire. I do not know what that means.

The Witness: Well, storage space was hard to find and he was going to find storage space. You to arrange storage, that is what I had in mind, you to find storage space.

* * *

(Testimony of John C. Kazanjian.)

Recross-Examination

By Mr. Hoppenstein:

Q. Mr. Kazanjian, when Mr. Crane talked to you on the telephone prior to his sending you the telegram of October 3, 1944, it is true, is it not, that he told you about the offer from Southwest Brokerage, Mr. Jay Margules of Dallas, Texas?

A. No, that is not true. He never mentioned names. He never told me who he was dealing with at any time. [173]

Q. What did he tell you?

A. He told me he was trying to arrange the storage deal.

* * *

Q. What did he tell you, Mr. Kazanjian?

A. Now Mr. Crane and I talked pretty nearly every day, and sometimes two or three times a day. Now what conversation you are referring to I honestly don't know.

Q. With reference to the 10 cars of U. S. No. 1 Emperor grapes at a price of \$2.50 net to you with \$1000 deposit for those 10 cars.

A. It wasn't 10 cars. We were discussing 15 cars at all times. It was never 10 cars.

Q. Isn't it true that Mr. Crane discussed with you on the telephone the sale of 10 cars with \$1000 deposit and 5 [174] cars on another transaction at \$750?

A. No names were mentioned and he was work-

(Testimony of John C. Kazanjian.)

ing on 15 cars. Not until I received the wire did I know that it was broken down into 10 and 5.

Q. It is your testimony, then, that prior to your receiving the telegram of October 3, 1944, Mr. Crane did not discuss with you two different sales of 10 and 5?

A. Not to my recollection, and no names, certainly no names, were ever mentioned.

Q. Did he discuss with you the matter of a \$750 deposit for one group of cars and a \$1000 deposit for another group of cars?

A. He might have, but no names were mentioned. I didn't know who he was dealing for or with at any time.

Q. My question, Mr. Kazanjian, is not——

The Court: He said he might have.

Mr. Hoppenstein: All right.

Q. You did in that telephone conversation tell Mr. Crane, did you not, that he could sell 10 of them with \$1000 deposit and 5 of them with a \$750 deposit, did you not?

A. I had more than one condition in that. When we were dealing on the storage there was more than one condition involved. It wasn't only a matter of \$1000 or \$500; the question was, who was assuming the risk in storage and the payments, whether the payments were in Exeter or to come from [175] some unknown party three or four weeks later. There were a lot of things involved. It wasn't just a matter of \$1000.

(Testimony of John C. Kazanjian.)

Q. Will you tell the court what that conversation was?

A. I can't tell you because I don't know which conversation you are talking about.

Q. The telephone conversation prior to your receiving the telegram of October 3, 1944.

A. I would say we discussed that storage deal at least 15 times before that wire because we talked back and forth every day, sometimes as much as four times a day. Now, you talk about one particular conversation and you don't identify which one.

Q. Mr. Kazanjian, you did receive a telegram, did you not, from Mr. Crane dated October 3, 1944, reading:

“Referring Telephone Have Sold for Your Account Basis \$2.50 Lug Net to You Block Emperors Mentioned Five Cars Basis \$750 Car Deposit, Ten Cars Basis \$1000 Deposit to Be Paid Upon Receipt U. S. 1 Government Inspections * * *”

Now you received that telegram, did you not?

A. Yes, I did.

Q. The telephone conversation referred to in that telegram, will you tell the court what that was?

The Court: You mean all of them? He said there were 10 or 15 of them. [176]

Q. (By Mr. Hoppenstein): Immediately before you received the October 3, 1944, telegram.

(Testimony of John C. Kazanjian.)

A. You want to know the contents of that conversation?

Q. Yes.

A. Which conversation is that? I mean the one that that refers to? It could have been the day before, it could have been a week before, but I don't think that that makes much difference, but I can go into what we did discuss when we did discuss the storage, if that is what you want.

Q. I am talking about the telephone conversation referred to in this telegram of October 3rd, Mr. Kazanjian.

The Court: Tell us all the conversations you had.

The Witness: All right. I will tell you how the whole thing started.

Ray called up and wanted to know if I was interested in putting some grapes in storage, and I told him if he had some storage space and could arrange for the right deal I would.

Now, we were operating, mind you, under a ceiling where it wasn't good business——

The Court: No, no. He just wants the conversation.

The Witness: All right.

Ray proposed a storage deal. He said he had some storage space and I said I would be interested if the conditions were right. And I named the conditions that I wanted. [177]

The Court: What did you tell him?

The Witness: I told him that I wanted my payment in Exeter. That is the thing that I had in-

(Testimony of John C. Kazanjian.)

sisted on because right next door to me a tomato shed went broke on a good year because they owed——

The Court: Did you tell him that?

The Witness: Yes.

The Court: Very well.

The Witness: Because the tomato shed went broke because the parties he sold to owed them \$32,000 when he got through and the tomatoes were bringing good money, so I wanted to be sure that I had my money right there in Exeter at the time while I still had physical possession of my grapes.

Now I might have been very naive——

The Court: Did you tell him that?

The Witness: I am telling you what I told him.

The Court: You did not tell him you might be naive, did you?

The Witness: I wouldn't be surprised. Maybe not in those words, but the things that I insisted on—he wanted me to tie in all the rest of my grapes. He was going to give me the storage space because storage was scarce if I would give him the balance of my business. Now that is something that I didn't want to commit myself to at the time. That was one of the conditions. [178]

The other condition was that I wanted my payment in Exeter.

The other condition was that they were to take the inspection in Exeter. I wanted it clear that it wasn't going to be inspected out of storage or any

(Testimony of John C. Kazanjian.)

other place. The inspection was to take place at the place of packing.

Now those were the three major things I insisted on. And when I got the wire from him, not one of those was clear and not one of those terms was satisfactory.

Q. (By Mr. Hoppenstein): I didn't ask you that.

A. Excuse me.

Q. I just want the telephone conversation.

The Court: Did you say anything in the telephone conversation about new lidded display lugs?

The Witness: I have never packed a display lug and he never mentioned to me that he wanted a display lug. I have a plain lug. It is not a display lug. I have never since I have been in the packing business packed a display lug. I didn't know until today that a display lug was mentioned, until five minutes ago.

Q. Mr. Kazanjian, the telegram that Mr. Crane sent you on September 26, 1944, you were acquainted with that telegram, were you not, that Mr. Crane sent to various brokers?

The Court: Show it to him. [179]

* * *

Q. The first telegram that Mr. Crane sent out.

A. You ask me if I was acquainted with this?

Q. Yes.

A. Absolutely not. I never had any idea he sent it.

Q. You never knew that Mr. Crane had sent that telegram?

A. No.

(Testimony of John C. Kazanjian.)

Q. You never gave him the terms of \$2.53 net to the shipper?

A. That was the ceiling. I didn't have to give him that.

Q. I asked you if you gave him that.

A. I don't remember, but it was the ceiling. That naturally would be the price if we were going to make a deal.

Q. Did you originally tell Mr. Crane that you had unclassified or vineyard-run grapes to sell?

A. We have all varieties. There is not a vineyard that doesn't have all.

Q. Did Mr. Crane ever notify you that he had a purchaser of 10 cars of U. S. 1 grapes at \$2.50 per lug net to you with a \$1000 deposit?

A. That is that October 4th wire, isn't it?

Q. Did he ever tell you that by telephone? [180]

A. Not that I remember; no.

Q. Do you deny that he told you that?

A. I say not that I remember.

Q. He might have told you?

A. He may have, yes, and he may not.

The Court: If I understand your testimony, your conversation with Crane always was about 15 cars?

The Witness: Fifteen cars is what we dealt with.

The Court: Ten might be \$1000 or five might be \$750, but it was always about 15 cars?

The Witness: Absolutely right.

Q. (By Mr. Hoppenstein): When you received

(Testimony of John C. Kazanjian.)

the telegram from Mr. Crane of October 3rd advising that he had sold for your account the 15 cars, did you notify Mr. Crane that that sale was not satisfactory?

A. Which wire is that? October 3rd?

Q. October 3rd.

A. Yes, I indicated that by my return wire.

Q. You indicated that?

A. Well, I made it plain as pie. I insisted on my old terms and indicated that his terms were not satisfactory.

Q. Mr. Kazanjian, will you point out in your telegram—you replied by telegram of October 4th?

A. Yes, I did. [181]

Q. Did you have any telephone conversation about it?

A. We talked at least two or three times every day.

Q. After the telegram of October 3rd and prior to your telegram of October 4th, did you talk to him by telephone on it?

A. Every day before and after.

Q. Did you discuss this sale of the 10 cars and the 5 cars with him?

A. After the 4th, yes, we talked.

Q. Prior to your telegram of October 4th, did you tell him by telephone that his sale was not satisfactory?

* * *

The Witness: No, I did not.

(Testimony of John C. Kazanjian.)

The Court: But you did talk to him after you sent the wire?

The Witness: He called me up after he received the wire.

The Court: That day?

The Witness: I think it was that day. or the next day.

The Court: What went on in that [182] conversation?

The Witness: We discussed this new terms and he said he would contact the people he had been negotiating with and he felt certain that he could arrange the deal.

The Court: On the 15 cars?

The Witness: On the 15 cars, or whatever was in that October 3rd wire.

The Court: That is 15 cars.

The Witness: And he was to send his man Hoover to come over there and straighten things out. That was the last conversation. And then the next thing the ceilings went off.

The Court: Did Hoover come?

The Witness: Hoover came.

The Court: To see you?

The Witness: He got there the day after the ceilings went off.

The Court: Very well.

Q. (By Mr. Hoppenstein): Did Mr. Crane tell you that he had wired Southwest Brokerage of Dallas that he had secured your confirmation of the sale of 10 cars?

(Testimony of John C. Kazanjian.)

A. Mr. Crane never told me who he was doing business with; never.

Q. Did he tell you that he had confirmed a sale for Red Lion of 10 cars?

A. In the wire you mean or telephone? [183]

Q. By telephone. A. Before October 3rd?

Q. Yes. A. No.

Q. Before October 4th? A. No.

Q. He did not tell you that? A. No.

Q. Did he tell you that in a telephone conversation on October 4th? A. No.

Q. Did he tell it to you on October 5th?

A. We discussed the wire that I sent on October 5th, I think it was, or October 4th.

Q. Now I show you your October 4th wire to Associated. Did you sign that wire, Mr. Kazanjian?

A. I think I did.

Q. Am I reading correctly:

“Fifteen Cars Storage U. S. 1 Emperors
December Tenth Conversion Satisfactory at
Two Dollars and Fifty Cents F. O. B. Exeter
Guaranty by Buyer. One Thousand Dollars
Deposit on Ten Cars and Seven Hundred Fifty
Dollars on Five Cars Said Deposit to Be Paid
Immediately on Inspection at Shipping [184]
Point.”

A. That is right.

Mr. Hayhurst: Will you read the rest of that wire, Mr. Hoppenstein?

Mr. Hoppenstein: Yes, sir. I would be glad to.

(Testimony of John C. Kazanjian.)

“You to Arrange for Storage as Agreed.
Balance of Pack Intend to Load After October
20th. Will Be Glad to Make Deal on Same
About the Fifteenth of October.”

Q. Now will you please point out in that wire where you stated to Mr. Crane that his sale for your account basis \$2.50 lug net to you block of Emperors mentioned 5-car basis \$750 car deposit 10-car basis \$1000 deposit to be paid upon receipt of U. S. 1 government inspections, is different and where you pointed out that that was not satisfactory to you?

Mr. Hayhurst: We will object to that on the ground it is argumentative.

The Court: Objection sustained.

* * *

Redirect Examination

By Mr. Hayhurst:

* * *

Q. Did you authorize Mr. Crane or the Associated Fruit Distributors in writing on or before October 4, 1944, to sell Emperor grapes to either one of the complainants in this action?

The Court: Or to the Southwest Brokerage Company?

Mr. Hayhurst: Or to the Southwest Brokerage Company?

Mr. Pines: To which we object on the ground it is incompetent, irrelevant and immaterial. The fact that there was authorization, or rather the transaction, is already in evidence.

(Testimony of John C. Kazanjian.)

The Court: Overruled.

The Witness: No, I did not.

The Court: Did you ever execute any writing to Mr. Crane in connection with this transaction?

The Witness: No, I did not.

The Court: Other than the telegram?

The Witness: No. [186]

The Court: Did you ever execute any writing in connection with this transaction to the Southwest Brokerage Company?

The Witness: No, I did not.

The Court: To the West Texas Produce Company and Central Fruit & Vegetable Company?

The Witness: No, I did not.

Q. (By Mr. Hayhurst): The wire of Associated Fruit Distributors to you dated October 3rd states:

“Will Forward Confirmation for Your Signature Soon as Received Air Mail From Buyers.”

Did you ever receive from the Associated Fruit Distributors or Mr. Crane any confirmations of this sale other than this wire of October 3, 1944?

The Court: Any written confirmation?

Mr. Hayhurst: Any written confirmation.

The Witness: No, I did not.

The Court: Did you ever receive any document from him?

The Witness: No, I did not.

The Court: Asking for your signature?

(Testimony of John C. Kazanjian.)

The Witness: I did not.

The Court: Did you ever receive any writing from him executed by him or by the Southwest Brokerage or West Texas or Central Fruit & Vegetable wherein they stated that they [187] would buy these?

The Witness: No.

The Court: Ten cars or 15 cars or anything else?

The Witness: No, I never did know who the people were.

The Court: Did you ever receive any documents, is what I am asking you.

The Witness: No, I did not.

Mr. Pines: Does the court mean other than the October 3rd telegram?

The Court: Other than the October 3rd telegram.

The Witness: No, I did not.

Q. (By Mr. Hayhurst): Did you receive any confirmation or written documents other than the October 3rd letter?

The Court: October 3rd letter?

Q. (By Mr. Hayhurst): October 3rd telegram, from the Central Fruit & Vegetable Company or the West Texas Produce Company or the Southwest Brokerage Company?

A. No, I did not. [188]

* * *

Q. And with reference to Exhibit G-1, just as a matter of explanation, the prices set forth and the

(Testimony of John C. Kazanjian.)

amount received, are those the net prices received by you?

A. Yes, those are the net prices received by me in this column right here.

Q. And the sales price then would have had in addition to that a commission charge?

A. After the ceilings went off we were paying, I think Mr. Crane was getting from \$40 to \$50 a car.

Q. So that in most of these cases where the sale would be indicated as 2.97——

A. That means a \$3 sale.

Q. Yes.

I don't think that that was made clear in the testimony before.

The Court: No, it was not. [189]

* * *

RAYMOND M. CRANE

called as a witness by and on behalf of the respondents, having been first duly sworn, was examined and testified as follows:

The Clerk: Your name, please?

The Witness: Raymond M. Crane. [190]

* * *

Direct Examination

By Mr. Wackerbarth:

Q. Mr. Crane, you are one of the defendants in this action? A. Yes, sir.

(Testimony of Raymond M. Crane.)

Q. And you do business under the name of Associated Fruit Distributors of California?

A. I did at the time of this action.

* * *

Q. You are the party referred to in these telegrams here as Crane and Associated Fruit Distributors?

A. Yes, sir.

* * *

Q. Now, Mr. Crane, do you recall the occasion of you sending a telegram to Southwest Brokerage stating that Red Lion took the position that the ceilings being lifted that the contract was no longer binding? [191]

A. Yes, sir.

Q. And that was about October, shortly after October 9th or 10th, the date of the lifting of the ceilings?

A. Yes.

Q. Now, with reference to that date, Mr. Crane, I will ask you: Were you at that time selling Emperor grapes by carload lots?

A. Yes, sir.

Q. And were other brokers in Los Angeles selling grapes in carload lots?

A. Yes, sir.

Q. And do you have a way of determining from any records which are maintained by the trade or industry sales that are being made from time to time of these grapes?

A. It is published daily in the Federal Market News Service, the general f.o.b. shipping point quotations.

Q. Mr. Crane, I show you here certain market reports. Can you identify those market reports

(Testimony of Raymond M. Crane.)

issued by the produce trade during the year of 1944?

The Court: Let us have them marked as I.

(The documents referred to were marked Respondents' Exhibit I for identification.)

The Witness: Yes, these are Market News Service Reports issued by the U. S. Department of Agriculture. [192]

Q. (By Mr. Wackerbarth): You have examined those, have you, Mr. Crane? A. Yes, sir.

Q. Is it necessary to refresh your recollection from those documents in order to determine the market price or the selling price of Emperor grapes for the months of October, November and December, 1944?

A. I haven't checked these records, but I know what my recollection of the market was at that time.

Q. What other brokerage houses in and about Los Angeles or the state of California were selling red Emperor grapes during the months of October, November and December, of 1944, to your knowledge?

A. A. Arena Company, Pacific Coast Fruit Distributors, Nash-De Camp.

Q. American Fruit Growers?

A. American Fruit Growers.

Q. Heggblade? A. Heggblade-Margules.

Q. Western Fruit Growers?

A. Western Fruit Growers.

(Testimony of Raymond M. Crane.)

Q. Any others that you recall?

A. Well, there are several others that handle them. I can't recall offhand.

Q. Do you recall what the red Emperor grapes were selling [193] for in carload lots where they had U. S. 1 during the month of October, 1944?

Mr. Hoppenstein: Your Honor please, we would like to urge an objection at this time with reference to the date of October, 1944, on the grounds that it is immaterial and irrelevant; that the time would be the date of performance to wit, December 10, 1944.

The Court: I have not made my final ruling yet as to whether or not if there was a contract the failure to perform was concurred in by the complainants. I will overrule the objection, subject to a motion to strike, in the event that your contention is correct.

* * *

Q. (By Mr. Wackerbarth): Do you have any knowledge at this time, Mr. Crane, as to what red Emperor grapes were selling for during the month of October for the purposes of storage and sale at a later date?

A. Generally \$3.

Q. I am first asking if you have any knowledge.

A. Yes, I do.

Q. What was the market value or the reasonable market value of red Emperor grapes during the month of October, 1944 [194] for delivery into storage and removal at a later date, that is, U. S. No. 1 grapes?

A. Generally \$3; some \$3.25.

(Testimony of Raymond M. Crane.)

Q. Did you have any that you were selling at that time? A. Yes, I believe we did.

Q. Do you know of any other brokers that were selling them at that price?

A. I think that was the general market quotations except as testified here previously, except for some outstanding labels, the market was generally \$3 to \$3.25.

* * *

Q. Do you recall, Mr. Crane, what these grapes were selling for to be placed in storage during the month of November, [195] 1944, that is, the market price on U. S. 1s?

A. Well, there wasn't any appreciable rise in the market value, and in November most of the grapes had been put into storage, as far as U. S. No. 1 quality was concerned. The question of whether or not grapes put into storage in October would be U. S. No. 1 when they come out would be a different thing.

Q. I am going to take that up with you in a minute. I am asking if you knew what the price was in November of these U. S. 1s for the purpose of going into storage.

A. Well, the market was generally \$3 to \$3.25 at that time.

Q. Did you have them for sale at that price?

A. Yes, sir.

Q. Do you know of any others that had been for sale at that price?

(Testimony of Raymond M. Crane.)

A. All distributors were quoting and delivering at that price at that time.

Q. And was Arena quoting and delivering at those prices? A. Yes, sir.

Q. Nash-De Camp? A. Yes, sir. [196]

* * *

Q. Now, Mr. Crane, as to the month of December, 1944, did you have occasion to quote red Emperor grapes to buyers in the Eastern market?

A. Yes, we were quoting daily.

Q. Did you quote any red Emperor grapes at that time? A. Yes.

Q. I have shown to counsel, and I am showing to you at this time, Mr. Crane, what appears to be a photostatic copy of an Associated Fruit Distributors bulletin which you sent out. [198]

* * *

Q. Now directing your attention to this bulletin, is that a photostatic copy of one that you sent to the trade generally? A. Yes, sir.

Q. And what did you quote there, Mr. Crane?

A. We quoted 2 to 3 cars of U. S. No. 1 from storage, subject to ability of making grade, at \$4.15 net.

Q. Was that quotation of \$4.15 net for Emperor grapes that graded U. S. 1 out of storage?

A. Yes.

The Court: That is f.o.b.?

The Witness: F.o.b.; yes.

The Court: That meant including storage?

The Witness: That included storage and subject

(Testimony of Raymond M. Crane.)

to ability of making grade.

The Court: These other prices here in October and November were ex-storage? They did not include storage? [199]

The Witness: They didn't include storage. They were f.o.b. without storage.

The Court: Very well.

Q. (By Mr. Wackerbarth): What were the government quotations on these Emperor grapes during that period of October and November?

A. In November?

Q. October and November. Have you checked them?

A. Well, the market on grapes was generally \$3 to \$3.25 during the entire period.

Q. And is that the prices that were being quoted in these government reports?

A. Yes. [200]

* * *

Q. You have already testified, I think, to the fact that it did represent the grapes as they went out of storage? A. Yes.

Q. Now, Mr. Crane, when you sent out this original telegram of September 26th, do you recall the contents of that telegram?

A. I think the telegram speaks for itself.

Q. I wish you would please examine this photostatic copy of the telegram and tell me whether or not there was any request for a confirmation by the buyer in that instance.

The Court: What was that?

(Testimony of Raymond M. Crane.)

Mr. Wackerbarth: Was there any request or any demand in that telegram for a confirmation by the buyer of any purchase?

The Court: Does not the telegram speak for itself?

Mr. Wackerbarth: Well, yes, but there are certain code words there, your Honor.

The Court: Very well.

The Witness: Well, we ask for an answer in response to our advising that we could book the grapes.

Q. (By Mr. Wackerbarth): Is there anything in that telegram about the confirmations? [201]

A. They were offered subject to confirmation.

Q. Now who would that refer to? When you say "offered subject to confirmation," who would that refer to?

The Court: That is what the word "ADLAM" means, A-D-L-A-M?

The Witness: Yes, sir.

The Court: In the trade?

The Witness: Yes, sir. That is a code word.

The Court: It means "offered subject to confirmation"?

The Witness: Offered subject to confirmation.

The Court: And the word "CORLU" means "wire immediately, must have answer by Thursday"?

The Witness: That is right.

Q. (By Mr. Wackerbarth): Now, among the trade, in a telegram of that character, Mr. Crane, who would that refer to as confirming the sale?

(Testimony of Raymond M. Crane.)

A. Well, in this particular instance it would refer to the party that sent the wire being able to confirm the terms of the wire sent.

Q. Then did that mean that it was to be confirmed by you or confirmed by the seller or confirmed by the buyer?

A. In this particular instance it would have to be confirmed by the seller. [202]

The Court: Our payment with confirmation, is that what that means?

The Witness: I beg your pardon?

The Court: It says: "Packed Twenty-Eight Pounds Net Display New Lugs Lidded Calripe or Comparable Brand \$500 Part Payment With Confirmation Price 2.53 Net to Shipper." That means they pay \$500 or you were to pay \$500? What does it mean?

The Witness: That means that the buyer is to pay \$500 with confirmation. In other words, it is customary in the trade on a transaction of this nature that the buyer upon acceptance of this offer would wire or transmit \$500 per car deposit.

The Court: And confirmation of the price of \$2.53 net?

The Witness: That is right.

Q. (By Mr. Wackerbarth): Did you ever get a confirmation signed by either the West Texas or the Central Fruit? A. No.

Q. Of any order? A. No. [203]

(Testimony of Raymond M. Crane.)

Q. Did you ever get a confirmation from Southwest Brokerage of a sale for the purpose of having it signed by the seller?

A. No, we never received a Standard Confirmation of Sale; no.

Q. Is there a difference between a Standard Memorandum of Sale and a Standard Confirmation of Sale among the produce trade? A. Yes, sir.

Q. What is the difference?

A. The difference is, a Standard Confirmation of Sale requires the signature of the buyer and the seller and the agent.

The Court: That is a printed form?

The Witness: A printed form, Standard Confirmation of Sale, approved by the U. S. Department of Agriculture and as under the Perishable Commodities Act.

The Court: Is it published some place in the Federal Register?

The Witness: I think it is. It is approved by the Department. [204]

* * *

Q. (By Mr. Wackerbarth): Mr. Crane, you have observed a Standard Memorandum of Sale which was sent to you in this case here?

A. Yes.

Q. Is that document that you observed there, the Standard Memorandum of Sale, is that different from the Standard Confirmation of Sale?

A. Yes, it is different.

(Testimony of Raymond M. Crane.)

Q. What is the purpose or object of the Standard Memorandum of Sale among the trade?

A. It is due to the fact that in many instances the seller requires a signed document and in some instances they don't require a signed document. I am talking about [205] nationally now.

Q. Yes, the practice. A. The practice.

The Court: You say you have one of those forms?

Mr. Wackerbarth: One is used here. It is an exhibit in this case, one of those standard confirmations, the one signed by Jay Margules.

The Witness: That is a standard memorandum.

The Court: That is a Standard Memorandum of Sale.

Mr. Wackerbarth: That is a Standard Memorandum of Sale.

The Court: I am looking for the confirmation.

Mr. Wackerbarth: We don't have one.

The Witness: There may be one in the Denunzio case filed there. I don't know whether it is a standard memorandum or confirmation.

Q. (By Mr. Wackerbarth): Mr. Crane, in the matter of the transactions between Southwest Brokerage, Kazanjian, West Texas and the Central Fruit, were you acting as an agent for any party?

A. Yes, sir. [206]

* * *

Q. Did you have any written authorization of agency in this case from either the Southwest Brokerage Company, the West Texas Produce Com-

(Testimony of Raymond M. Crane.)

pany, the Central Fruit & Vegetable Company, of form Kazanjian?

A. I had a telegram from Southwest Brokerage Company.

The Court: Which one is that?

Q. (By Mr. Wackerbarth): Designating you as an agent in this matter?

The Court: Which telegram is that?

Q. (By Mr. Wackerbarth): Which one are you referring to, Mr. Crane?

A. Well, that is the telegram that we received from Southwest confirming the deal.

The Court: Which telegram was that?

Q. (By Mr. Wackerbarth): Wasn't that a teletype conversation?

A. Either teletype or telegram. We considered them both the same.

Q. Do you find among your files here a telegram—I will hand you your file in that regard—do you find a telegram from Southwest Brokerage in which they confirmed or [207] created an agency, authorized an agency on your part?

A. (Examining file.)

The Court: To which telegram does he refer in his previous answer?

The Witness: In this teletype here where they offered to buy.

Q. (By Mr. Wackerbarth): Those are the teletypes that passed between you and Southwest Brokerage? A. Yes.

(Testimony of Raymond M. Crane.)

The Court: This will be marked for identification.

Mr. Wackerbarth: I think possibly we ought to let him read it in because it is very difficult to follow teletype messages.

The Court: He has handed me another one here. They can be read into the record. They will be marked Exhibits J and K.

Mr. Hayhurst: May they be read subject to any objection after we have heard what they are?

The Court: Very well.

(The telegrams referred to were marked Respondents' Exhibits J and K and received in evidence.) [208]

* * *

Q. (By Mr. Wackerbarth): Will you please read them? This was a teletype conversation which you had with Southwest Brokerage?

A. Yes. This is a teletype:

"Referring six cars Emperors Fort Worth and four Dallas, deal OK 2.50 net \$50 for you if legal. Presume it is legal or you wouldn't offer it. Advise. Go ahead."

That means for us to go ahead on the teletype. We replied:

"Haven't been able contact the shipper yet but sure it is OK. Will wire you definitely one way or other as soon as get him. Yes it is legal. Naturally a receiver can pay his whole markup for buying brokerage if he wants to. Will wire you soon as receive definite confirmation. Understand it is basis

(Testimony of Raymond M. Crane.)

\$1000 deposit against each U. S. 1 inspection as they are loaded."

Q. When did that teletype——

The Court: Then there is another one, "As far as I know that covers it." Is that it?

The Witness: It was on October 2nd.

The Court: Was there another one?

The Witness: It was followed up by a night letter or night message to Southwest Brokerage Company of Dallas [209] reading:

"Secured Red Lion Packing Company confirmation ten cars grapes as outlined you collect deposits to be forwarded to us soon as government inspection wired each car."

The Court: What does that mean, "as outlined you collect deposits"? You were to collect the deposits?

The Witness: No. It means that the Southwest Brokerage was to collect the deposits as outlined in the previous teletype message, namely, the basis of \$1000 deposit.

Mr. Hayhurst: We would object to the introduction of any conversation about having secured confirmation from Red Lion in the absence of any proof of the authorization in writing from Red Lion to the sender of that telegram or teletype to send such message. As far as Red Lion is concerned, it would be hearsay. It would be a conclusion of the sender.

The Court: I think it is, but I think it is admissible nevertheless. The objection is overruled.

(Testimony of Raymond M. Crane.)

Q. (By Mr. Wackerbarth): Did you have any teletype conversations with Southwest Brokerage or did you in any telegram waive the confirmation by both buyer and seller? A. No. [210]

* * *

Q. Was it your intention at that time, Mr. Crane, to have the purchaser sign a written confirmation of this sale? A. Yes, sir.

Q. Did you ever receive a written confirmation of this sale from the Southwest Brokerage?

A. No, sir.

Q. Did you ever receive a written confirmation of this sale from the West Texas Produce Company? [212] A. No, sir.

Q. Or from the Central Fruit? A. No, sir.

The Court: On a standard form or any other form?

The Witness: No signed confirmation; no.

Can I explain what we did receive, your Honor?

The Court: You received a memorandum?

The Witness: We received the Standard Memorandum of Sale.

Q. (By Mr. Wackerbarth): Now, Mr. Crane, among the produce trade is there such a relationship that is known as buying broker?

A. Yes, sir.

Q. What are the duties of a buying broker among the produce trade?

A. The duties of a buying broker is to contact shippers and procure and secure merchandise for buyers.

(Testimony of Raymond M. Crane.)

Q. Under those circumstances who pays the buying broker? A. The buyer.

Q. And is there any established practice of custom among the produce trade as to whose agent a buying broker is? Just answer that yes or no.

A. Yes.

Q. What is that practice or custom? [213]

A. In those respects he is the agent of the buyer.

Q. And in this particular instance were you acting as the agent of the buyer? A. Yes, sir.

Q. You are familiar with this telegram of October 3rd which you sent to Mr. Kazanjian?

A. Yes, sir.

Q. And you did receive the reply back that is a part of the findings of the Department of Agriculture, the telegram of October 4th?

A. Yes, sir.

Q. You received that back? A. Yes, sir.

Q. Prior to the sending of this telegram to Mr. Kazanjian, did you have a telephone conversation with him? A. Yes, sir.

Q. Did you confirm that telephone conversation by that telegram of October 3rd? A. Yes, sir.

Mr. Hayhurst: We object to that on the ground that it would call for a summary. This witness can testify to what he said or did.

The Court: Yes. Objection sustained.

Q. (By Mr. Wackerbarth): The telegram was sent after the conversation, that [214] is, the telegram of October 3rd? A. Yes, sir.

(Testimony of Raymond M. Crane.)

Cross-Examination

By Mr. Hoppenstein:

Q. Mr. Crane, earlier you testified, in answer to the questions propounded by your counsel concerning these War Food Administration quotations, that the price quoted was \$3 to \$3.25 per lug for U. S. No. 1 Emperor grapes. Will you please point out to me in these quotations the quotations that you testified about?

A. I didn't say that these—I said that I hadn't referred to these but that the market was \$3 to \$3.25.

Q. Are these the official quotations, Mr. Crane?

A. This is a quotation issued by the Federal-State Market News Service at San Francisco, California, outlining the local jobbing price in San Francisco which includes the jobber's markup and all of that. It is not the f.o.b. shipping point quotations on Emperor grapes or any other commodity that I can see.

Q. I will show you the one dated December 9, 1944, and ask you if it doesn't quote 28-pound lugs from cold storage Emperors \$4.25 to \$4.50, a few Almerias \$4.50.

A. This is the San Francisco jobber's price to the retail store. This is not the carload price that we are talking [215] about.

Q. Are all these quotations qualified by that?

A. I wouldn't say that. I haven't looked at all of them.

(Testimony of Raymond M. Crane.)

Q. Will you look at the one of December 11, 1944? A. (Examining exhibit.)

Q. In your previous testimony, that testimony was not based on these reports? A. No.

Q. All right. You didn't find those quotations in there then? A. No.

Q. Mr. Crane, it is true, is it not, that you wired Mr. Teel, a broker in Fort Worth, on or about December 11, 1944, that the market price for Emperors was \$4 per lug? A. No, I didn't.

Q. Would you produce your office copy of this in accordance with the notice to produce?

Mr. Wackerbarth: We don't have any. [216]

* * *

Q. (By Mr. Hoppenstein): I show you this copy of a telegram which is marked complainants' exhibit——

The Clerk: No. 6.

(The copy of the telegram referred to was marked Complainants' Exhibit No. 6 for identification.)

Q. (By Mr. Hoppenstein): ——Complainants' Exhibit 6, and ask you whether or not that is a true copy of a telegram you sent to Jimmie Teel in Fort Worth?

A. (Examining exhibit): This is a copy of a wire that [217] was sent by Associated Fruit Distributors of California to Jimmie Teel of Fort Worth, December 11, 1944, which reads:

“Referring to Our Circular of the Ninth Not

(Testimony of Raymond M. Crane.)

Sure but Think Owner Willing Confirm 4.00 Emperors Subject Immediate Reply.”

Q. So that was the prevailing price in Los Angeles on December 11, 1944?

A. No, wait a minute. This does not show the kind nor quality, unless it is tied in with the rest of it. That might be Extra Fancy, Super Duper—I don’t know what it is without refreshing my memory.

Q. Your circular of December 9th refers to U. S. 1 Emperor grapes, does it not, Mr. Crane?

A. Yes, sir.

Q. And you are quoting their \$4.15 f.o.b.?

A. That is on U. S. No. 1s out of storage.

Q. Isn’t it true that Mr. Teel in Fort Worth attempted to get confirmation from you for grapes of U. S. No. 1 quality?

A. I don’t recall that he did.

Q. What was the occasion for you sending that telegram quoting that price?

A. It might have been an effort to solicit business. I don’t know.

Mr. Hoppenstein: We offer Exhibit No. 6 in evidence. [218]

The Court: Admitted as No. 6.

(The telegram previously marked Complainants’ Exhibit No. 6 for identification was received in evidence.)

Q. (By Mr. Hoppenstein): Mr. Crane, it is true, is it not, that U. S. No. 1 Emperor grapes were

(Testimony of Raymond M. Crane.)

scarce in October, November and December of 1944?

A. No, they weren't scarce.

Q. It is true, is it not, that there was a great demand for U. S. No. 1 Emperor grapes?

The Court: In those months?

The Witness: The demand was off and on. Demand is not continuous.

Q. (By Mr. Hoppenstein): During the months of October, November and December, 1944, wasn't the demand so great that buyers were willing to pay a procurement charge for them?

A. No, that isn't true. The only time the buyers were willing to pay a procurement charge was during the ceiling.

Q. After the ceiling was lifted, did you handle all of Mr. Kazanjian's grapes?

A. I don't think so. [219]

* * *

Q. Did you handle all his grapes?

A. I think we handled a few.

Q. How many?

A. I don't recall exactly.

* * *

Q. Did you handle the cars concerning which Mr. Kazanjian testified about with reference to the summary of the sales that he made, were those sales made by you?

A. Well, I can't remember. If they are on his record I would be able to take that record that we handled them. [220]

(Testimony of Raymond M. Crane.)

Mr. Hoppenstein: Do you have that exhibit?

The Court: Exhibit G-1.

Mr. Wackerbarth: Give him Exhibits G and G-1.

(The exhibits referred to were passed to counsel.)

Q. (By Mr. Hoppenstein): Exhibit G-1, is that the summary of your sales for Mr. Kazanjian?

A. I wouldn't be able to testify to that. Mr. Kazanjian could testify whether they were. I couldn't remember whether they were or not.

Q. You received a commission and brokerage on the sale of the grapes that you handled for Mr. Kazanjian, didn't you?

A. Well, I would have to assume that we did. I couldn't remember unless I actually looked at the record whether we received a commission on those specific cars or not.

Q. On any of the cars that you handled for Mr. Kazanjian?

A. Yes, on some of the cars we did receive a commission.

Q. Mr. Crane, when you wired Southwest Brokerage on October 2, 1944, at 5:25 p.m., "Secured Red Lion Packing Company confirmation ten cars grapes as outlined you collect deposits to be forwarded to us soon dupja wired each car," you recall that telegram?

A. Yes, sir. [221]

* * *

Q. You signed that?

A. Yes, sir.

* * *

(Testimony of Raymond M. Crane.)

Q. What statement or authority or conversation had you secured from Mr. Kazanjian, Red Lion, as a basis of sending that wire?

A. Well, Mr. Kazanjian stated that if we could meet the terms demanded he would be—— [222]

* * *

Q. Will you answer, Mr. Crane?

A. That he would sell these grapes under the terms that we had outlined in our telegrams and previous communications.

Q. Did you outline to Mr. Kazanjian the terms under which you offered these grapes and had received an offer back from Southwest Brokerage Company? A. Yes, sir.

The Court: On the telephone?

The Witness: Yes.

The Court: What did you say to him?

The Witness: I told him that this man, that we wanted to buy these grapes for this man at the price of \$2.50 and \$1000 a car deposit.

The Court: For 15 cars.

The Witness: For 10 cars. On this particular transaction there was 10 cars and I think there was 5 still open.

The Court: But it was all 15 cars?

The Witness: We were working on 15 at the time. I think we sold the other 5 at the time to Denunzio. There were 15 cars in the [223] transaction.

The Court: Did you tell Mr. Kazanjian that these were to be new display lidded lugs?

(Testimony of Raymond M. Crane.)

The Witness: I don't think we specifically mentioned that they were to be new display lidded lugs.

The Court: To him?

The Witness: I don't think we specifically mentioned it at that particular time; no.

Q. (By Mr. Hoppenstein): Had you mentioned it at a prior time?

A. No. I still would understand that they would be display lugs because practically a hundred per cent of the shippers always use display lugs.

Q. Was Mr. Kazanjian using new display lugs?

A. I didn't know. I was assuming that he was using them.

Q. When you sent your telegram of September 26, 1944, you specified packed 28-pound net display new lugs lidded Calripe or comparable brand, did you not?

A. Yes, sir.

Q. At that time did you know that Mr. Kazanjian had that type of grape?

The Court: Had that type? You mean that Calripe or comparable brand?

Mr. Hoppenstein: That is right, the Calripe brand.

The Witness: Yes, I did. [224]

Q. (By Mr. Hoppenstein): Was that his brand?

A. Yes.

Q. Did you know he had the display new lugs?

A. I thought that he had. Every shipper uses display lugs. If he didn't use it, it is news to me right now.

The Court: You never discussed it with him?

(Testimony of Raymond M. Crane.)

The Witness: No.

The Court: Did you tell Mr. Kazanjian that he was to pay all storage charges?

The Witness: We talked about the storage charges and the deal was to be made and the buyer put up the deposit on the grapes. We were to procure the storage. I can't recall specifically what we said about paying the storage.

The Court: Who was going to pay the storage?

The Witness: On the basis of the transaction.

The Court: You did advise the people who received this telegram of September 26th that the shipper would pay all the storage?

The Witness: Well, under that, if I did why we discussed it because I would have to look at the record to be sure how we did arrive at that, but I know we arranged the storage.

Q. (By Mr. Hoppenstein): Mr. Crane, at the time you sent the telegram of September 26th, 1944, the first time to the 13 brokers, firms, outlining the proposal to book these cars of grapes, had you [225] discussed the terms under which you offered those grapes with Kazanjian? A. Yes, sir.

* * *

Q. Prior to your sending the telegram of September 26, 1944, outlining the terms and quoting originally a price of \$2.53 with a \$500 part payment, prior to your sending that telegram had you discussed those terms with Mr. Kazanjian?

A. Yes, I discussed them. Mr. Kazanjian said

(Testimony of Raymond M. Crane.)

if I had any business at that price that he would think about confirming it. [226]

Q. Did you subsequently, on October 2nd, send out wires to the various brokerage firms, including Southwest Brokerage Company, revising your quotation, reducing the price from \$2.53 to \$2.50?

The Court: There is a telegram of October 2nd, reading:

“CPFGP Quoting Futures Emperors Secured Revised Deal 15 Cars U. S. 1 2.50 Net Same Deal Corsd Any Part.”

Q. (By Mr. Hoppenstein): Did you sign that telegram and send it? A. Yes, sir.

Q. At the time you sent that telegram, had you discussed the terms of it with Mr. Kazanjian?

A. Yes, sir.

* * *

Q. What if anything did Mr. Kazanjian say to you concerning the terms outlined in your revised wire?

* * *

The Witness: That is right. It was all offered subject to confirmation. [227]

Q. (By Mr. Hoppenstein): Did he agree to that?

A. Yes. He didn't agree to it because it is subject to confirmation. In other words, you don't make a deal until you get a confirmation, until it is finished.

* * *

(Testimony of Raymond M. Crane.)

The Court: In your wire of October 2nd you refer to, "Haven't been able contact the shipper yet but sure it is OK. Will wire you definitely one way or other soon as get him. Yes it is legal. Naturally a receiver can pay his whole markup for buying brokerage if he wants to. Will wire you soon as receive definite confirmation." You used the term there, and you also used it in the wire to Kazanjian on October 3rd, "confirmation for your signature." And also in your wire of September 26th, the word "ADLAM" I understand means "offer subject to confirmation."

Now in the trade is that term "confirmation" understood to mean the standard form of Standard Confirmation of Sale?

The Witness: Well, not necessarily. The produce business and the perishable business by its nature requires that anyone doing business be very careful in their telegrams to state "subject to confirmation" because in sending a telegram, and you offer a firm book, you would be liable for delivery [228] and in all terms, and if you will look at the bottom of our bulletin it says, "all quotations are subject to confirmation," and the produce business being different than most businesses——

The Court: That is, confirmation in writing?

The Witness: That is right.

The Court: That is what is generally understood?

The Witness: That is generally what is understood.

(Testimony of Raymond M. Crane.)

The Court: By the person who is actually going to pay it?

The Witness: Yes. Telegrams in our business, however, are considered writing.

The Court: By a person who is going to pay for it?

The Witness: That is right.

The Court: By a broker?

The Witness: Not necessarily by a broker. If it is a requirement by the broker that they secure a written confirmation. There is rulings on that in the PACA.

The Court: What I am getting at here is the custom of the trade, in other words, the procedure. You would deal with somebody selling cherries or something else, with a broker, and you would make an offer to him and he would accept it, and then you are subject to confirmation?

The Witness: That is right.

The Court: Then he would have to secure a confirmation [229] from the person he was going to sell it to?

The Witness: That is right.

The Court: In writing?

The Witness: That is right.

The Court: And give it to you?

The Witness: That is right.

The Court: And you would have to secure it from the person you were going to buy it from and give it to him?

The Witness: That is right.

(Testimony of Raymond M. Crane.)

The Court: Is that what the term is generally understood to mean in the trade?

The Witness: It is generally understood to mean that.

The Court: And was it generally understood to mean that in October, 1944?

The Witness: Yes. The only difference, if I might clarify that, is that a memorandum of sale is usually used when a car is on track, like in Dallas, Texas, and they go down to a buyer and they agree at a price of \$2.50, etc., then they use the memorandum of sale and one is sent to the buyer.

The Court: In other words, the goods are there and it is a sale?

The Witness: That is right. But where it is a pre-season deal——

The Court: Or future delivery? [230]

The Witness: Or future delivery, the Standard Confirmation of Sale is always required, according to my experience.

The Court: In other words, in shipping oranges they would ship them en route to Kansas City and you would wire a broker that they were going to be there and the broker there would make the sale, he would make a memorandum of sale and deliver the oranges?

The Witness: He would get the money and that is all there would be to it.

The Court: He would get the money, you would get the oranges and he would get the memorandum?

The Witness: That is right.

(Testimony of Raymond M. Crane.)

The Court: But if you were selling oranges or cherries or potatoes or grapes today for futures, in the custom of the trade it is customary to get a confirmation of sale signed by the parties on both ends who are actually paying the money or delivering the goods?

The Witness: Yes, sir.

The Court: Very well.

Q. (By Mr. Hoppenstein): Isn't it true, Mr. Crane, that it is customary in the trade, and was customary in October, 1944, to accept telegrams as confirmation of sale?

A. Yes, except where they were required to secure a [231] signed confirmation. [232]

* * *

Q. (By Mr. Hoppenstein): Mr. Crane, in connection with this transaction involving the Southwest Brokerage Company, Central Fruit & Vegetable and West Texas Produce Company, directing your attention to the transaction involving the 10 cars of grapes, please state whether or not it was a custom of the trade in that type of transaction to secure a signed written confirmation from the shipper, such as Red Lion. [233]

* * *

The Witness: Yes.

Q. (By Mr. Hoppenstein): Mr. Crane, when you sent your telegram——

The Court: While you are on that subject, was

(Testimony of Raymond M. Crane.)

it the custom in the trade in the situation such as existed here in the interchange of telegrams, for you to secure a written confirmation of the sale from the principals who were the buyers, namely, the West Texas and the Central Fruit & Vegetable?

The Witness: Yes, sir.

The Court: And you did not ever get that?

The Witness: I never did receive it.

Q. (By Mr. Hoppenstein): Mr. Crane, when you wired Southwest Brokerage Company on October 2, 1944, at 5:25 p.m., "Secured Red Lion Packing Company confirmation," state whether or not you had Red Lion's signature on a confirmation.

A. I didn't. I had their verbal agreement over the telephone, as I stated here.

Q. Did you consider that a confirmation in accordance with the usage of the trade at that [234] time?

* * *

The Witness: The custom of the trade is, you get a deal, you call a shipper, you buy or sell or whatever you are doing, and if they agree to what you have done they say yes or no. In this particular instance I thought that I secured entire agreement as to what we proposed and what we had been proposing.

The Court: But you had not secured a confirmation in the sense that you have been using the word in response to my questions?

The Witness: Confirmation of sale and signature, that is a different subject.

(Testimony of Raymond M. Crane.)

Q. (By Mr. Hoppenstein): You hadn't received that written confirmation of sale, had you?

A. No.

Q. But you did wire Southwest Brokerage Company that you secured confirmation, didn't you?

A. Of the deal, because the Southwest Brokerage Company was to get a confirmation signed by the buyer and send it to us and we would get it signed by the shipper and send one copy back and retain one copy.

Q. You intended for Southwest Brokerage Company and West Texas Produce Company and Central Fruit & Vegetable Company to rely upon your telegram of October 2nd, did you not? [235]

* * *

The Witness: Yes.

* * *

Q. You received from Southwest Brokerage Company, did you not, Mr. Crane, a Standard Memorandum of Sale agreement dated October 3, 1944?

A. Yes, sir.

Q. Signed by Jay Margules? A. Yes, sir.

Q. Did you not? A. Yes, sir. [236]

* * *

Q. You received it, did you not, right after October 3, 1944?

A. Well, I don't know when I received it. I can't remember that far back. It may be sometimes a week, and sometimes they don't send them for two weeks.

(Testimony of Raymond M. Crane.)

Q. When you received it did you make any objection to it? A. No, sir. [237]

* * *

The Witness: I will tell you, to be perfectly frank with you, I very seldom look at those confirmations. They come into the office and they go into the file, and we rely mostly on our wire transactions. We get a wire transaction complete and the whole business goes into a jack, and we usually look at the price, or the girl looks at the price, and sees that it is the same as is on the jacket, but in this particular instance the ceiling went off and we just sort of dropped it.

Q. (By Mr. Hoppenstein): Mr. Crane, at the time the ceiling went off, did you receive a wire from Southwest Brokerage Company requesting whether or not the cars of grapes could be delivered and shipped prior to December? [238]

* * *

The Court: Is that wire here?

Mr. Hoppenstein: Yes, the wire is in evidence, or teletype I believe.

Q. You had a conversation with Mr. Margules concerning it, didn't you?

A. The record I think will speak for itself.

Q. Did you then contact Mr. Kazanjian to ascertain whether or not the grapes would be delivered?

(Testimony of Raymond M. Crane.)

A. Yes, sir.

Q. What did Mr. Kazanjian tell you?

A. Mr. Kazanjian told me that inasmuch as the ceiling was off that he didn't feel that we had a contract, he didn't feel that he had committed himself to anything and he wouldn't deliver the grapes.

Q. You sent a letter to Southwest—I mean a telegram to Southwest Brokerage Company—stating that Red Lion considered account ceiling lifted any contracts Emperors voided, didn't you?

A. That is right.

* * *

Q. I will ask you whether or not Mr. Kazanjian told you [239] that he didn't consider the contract with Central Fruit and West Texas Produce valid because the ceiling had been lifted?

A. I don't recall as to that. He wouldn't deliver the grapes. [240]

* * *

July 13, 1950—10:00 A.M.

RAYMOND M. CRANE,

the witness on the stand at the time of adjournment, resumed the stand and testified further as follows:

Cross-Examination
(Continued)

By Mr. Hoppenstein:

* * *

Q. Mr. Crane, did you have occasion to inspect

(Testimony of Raymond M. Crane.)

Mr. Kazanjian's grapes that were involved in the transaction that you had with Mr. Margules?

A. Not these specific grapes; no.

Q. You never did inspect them?

A. I don't know that I would be able to identify them as connected with these specific lots.

* * *

Q. You had men in your office working for you at that [250] time, didn't you? A. Yes.

The Court: Do you know what Mr. Kazanjian's total crop was that year in carloads, or what it had been the previous years?

The Witness: Well, it varies from year to year because his total crop itself—he owns so many vineyards one year, sells some, has more the next year, and buys some.

The Court: Forty or 50 cars a year?

The Witness: Roughly 50 to 75.

The Court: Fifty to 75 cars a year?

The Witness: Yes.

Q. (By Mr. Hoppenstein): In addition to his own crops, does he buy and sell other crops?

A. At times.

Q. Was he doing it in '44?

A. I don't recall specifically.

Q. On October 12th, Mr. Crane, did you send this wire to Southwest Brokerage Company, a copy of which I am showing you?

* * *

(Testimony of Raymond M. Crane.)

The Witness (Examining telegram): Yes. [251]

* * *

The Court: The witness testified he sent the wire?

The Witness: Yes, sir.

May I qualify that, your Honor?

The Court: Yes.

The Witness: In my opinion that doesn't necessarily mean that those are the same grapes that were originally tendered in the original contract.

The Court: I understand. In other words, you cannot identify one gallon of water in a 5-gallon can.

The Witness: Correct.

The Court: Proceed.

Q. (By Mr. Hoppenstein): Mr. Crane, your deposition was taken on April 28, 1950, was it not, by Mr. Pines in Los Angeles?

A. I think that is a matter of record.

Q. Well, you testified in answer to questions propounded to you before a court reporter, did you not? [253]

A. Yes.

Q. I will ask you whether or not you didn't testify, in response to a question propounded to you by Mr. Pines, as follows:

"Q. I will ask you, Mr. Crane, whether or not you had a long distance telephone conversation with Mr. Kazanjian before you sent that wire"?

Mr. Hayhurst: May I have the page?

Mr. Hoppenstein: Yes. It is page 11, line 12.

(Testimony of Raymond M. Crane.)

Q. And you answered:

“A. Yes, sir.”

Didn't you so testify? [254]

* * *

The Court: I have the testimony here. I have read it. And the witness stated that he so answered.

Q. (By Mr. Hoppenstein): Mr. Crane, didn't you testify on April 28th:

“A. Mr. Kazanjian confirmed to us, as agents for the buyer, the carloads of grapes in question under the terms and on the basis of the telegrams that we have mentioned here that were sent back and forth and was later confirmed by Mr. Kazanjian's wire to us as of the next day, as I recall.”

You so testified, didn't you?

A. That is too long.

The Court: Show him the testimony. Here is the deposition. [255]

The Witness: (Examining deposition.)

Q. (By Mr. Hoppenstein): Page 11, line 18. Is that your testimony? A. That is right.

Q. And on page 12 of that deposition, line 4, the question was:

“Q. In this conversation did you relate to him the terms that had been agreed upon with Southwest Brokerage Company with respect to the sale of this carload of grapes?”

(Testimony of Raymond M. Crane.)

And your answer was:

“A. Yes, sir.”

Is that right? A. That is right.

Q. Continuing:

“Q. Or I should say 10 carloads of grapes, and Mr. Kazanjian at that time told you that it was a deal and you could go ahead and confirm it”?

And you answered:

“A. That is right.”

Did he so tell you? A. That is right.

Q. Line 12:

“Q. I refer you to a telegram, Mr. Crane, from you to Mr. Kazanjian, dated October 2, 1944, [256] which starts out as follows:

“ ‘Referring telephone have sold for your account basis 2.50 lug net to you block Emperors mentioned * * *’

“A. That is right.”

You so testified? A. Yes.

Q. Line 18:

“Q. That conversation referred to in that telegram is the telephone conversation you have just testified concerning?

“A. Yes, sir.”

Is that right? A. That is right.

Q. Next question:

“Q. The terms mentioned in this telegram

(Testimony of Raymond M. Crane.)

are the terms discussed between you and Mr. Kazanjian in that telephone conversation that preceded the sending of that telegram?

“A. Yes, sir.”

Is that right? A. That is right.

Q. Next question:

“Q. Did you receive a reply from Mr. Kazanjian? [257]

“A. Yes, sir.”

You so testified? A. Yes, sir.

Q. Next question:

“Q. Do you have that before you?

“A. Yes, sir.

“Q. That is the telegram that reads as follows:

“ ‘Fifteen cars storage U. S. 1 Emperors December 10th conversation satisfactory at two dollars and fifty cents f.o.b. Exeter guaranteed by buyer one thousand dollars deposit on ten cars and seven hundred fifty dollars on five cars said deposit to be paid immediately on inspection at shipping point you to arrange for storage as agreed balance of pack intend to load after October 20th will be glad to make deal on same about 15th of October.’

“Is that the telegram you received from Mr. Kazanjian? A. Yes, sir.”

Is that your testimony? A. Yes.

(Testimony of Raymond M. Crane.)

Q. Now, Mr. Crane, getting off a minute from the deposition, after you received the wire from Mr. Kazanjian dated October 4th, did you then communicate to Southwest Brokerage, Mr. Margules or these complainants here, that there was any [258] change in the offer?

A. I communicated with them as borne out by the record here in relation to our telegrams which we have sent.

Mr. Hoppenstein: If your Honor please, I think we are entitled——

The Witness: I can't remember exactly what I said unless I refer to the wires and whatever I sent in the wires that is what I confirmed. [259]

* * *

Q. (By Mr. Hoppenstein): After October 4th and prior to October 10th, did you send any wire to Associated advising that your telegram of confirmation was erroneous?

Mr. Hayhurst: We would object to that on the ground that it calls for a conclusion and opinion of the witness.

The Court: Let me hear the question.

(The question referred to was read by the reporter as follows:

("Q. After October 4th and prior to October 10th, did you send any wire to Associated advising that your telegram of confirmation was erroneous?")

(Testimony of Raymond M. Crane.)

The Court: To Associated?

Mr. Hoppenstein: To Southwest.

Mr. Wackerbarth: We object to that as calling for a conclusion of the witness.

The Court: It is a little complex and compound. I do not understand it.

Q. (By Mr. Hoppenstein): After you received the wire from Mr. Kazanjian of October 4th, please state whether or not you sent any wire to Southwest Brokerage advising them of the receipt of Kazanjian's wire. A. I don't remember. [260]

* * *

Q. As a matter of fact, you didn't, did you, Mr. Crane?

A. I don't remember. I don't see it here.

Q. Now, going back to the deposition on page 13, line 16:

"Q. Was there anything in that telegram that indicated to you that Mr. Kazanjian was quoting terms different from or other than those terms which he had authorized you to confirm to the Southwest Brokerage Company?

"A. They are the same terms that we offered to the Southwest Brokerage Company."

That is correct, isn't it?

A. Well, as I recall——

Mr. Hayhurst: Just a minute.

Q. (By Mr. Hoppenstein): That is your testimony. [261]

* * *

(Testimony of Raymond M. Crane.)

The Court: Well, he so testified.

Q. (By Mr. Hoppenstein): That was your testimony on April 28th, wasn't it, Mr. Crane?

A. Yes, sir.

Q. And the next question:

"Q. Shortly thereafter the Southwest Brokerage Company sent you a Standard Memorandum of Sale on this transaction, is that right?

"A. Yes, sir."

You so testified? A. Yes.

Q. On page 14, line 2:

"Q. Do you recall receiving the Standard Memorandum of Sale?

"A. I don't recall specifically receiving it, but here is a photostatic copy of it or what purports to be a photostatic copy of it.

"Q. What did you do with that Standard Memorandum of Sale when you received it?

"A. I think we probably filed it.

"Q. Was there anything in that Memorandum of Sale containing the terms different from or other than those terms of sale which had been confirmed in the telegraphic correspondence that we have [262] mentioned previously?

"A. In substance, the confirmation is the same. There are a few small differences, but in substance I would say the confirmation is the same.

"Q. Was there anything about the Standard

(Testimony of Raymond M. Crane.)

Memorandum of Sale that would cause you or that did cause you to cause any correction to be made in it?

“A. Well, I don’t recall specifically right at the moment without checking back on those telegrams.

“Q. Did you communicate with the Southwest Brokerage Company in any manner or form for any correction as to the Standard Memorandum of Sale?

“A. I don’t specifically recall right offhand at the moment.”

That is what you testified to on the 28th of April?

A. Yes.

Q. Now, Mr. Crane, have you inspected your records and checked your telegrams to see if you did send any telegrams correcting the Standard Memorandum of Sale agreement?

A. No, we didn’t send any telegrams correcting any Standard Memorandum of Sale. We didn’t consider it a contract.

Q. You didn’t consider it a contract?

A. We requested a signed confirmation on the transaction. [263]

Q. Yes? A. We never received it.

Q. Did you receive confirmation from Kazanjian?

A. We had a telegram from Kazanjian; yes.

Q. You did represent as a broker, did you not, Mr. Crane, that you had secured confirmation?

(Testimony of Raymond M. Crane.)

Mr. Wackerbarth: That is objected to as calling for a conclusion of the witness. He didn't say that at all.

Mr. Hoppenstein: His telegram stated that.

The Court: Objection sustained.

Q. (By Mr. Hoppenstein): You did send a telegram stating that you had secured confirmation?

A. Yes, sir.

Q. Did you secure confirmation?

Mr. Hayhurst: Same objection.

The Court: It all depends on what you mean by "confirmation," counsel. The question is not clear, did you secure confirmation. It looks to me like that is what I have to decide.

Mr. Hoppenstein: As described in the telegram to Southwest Brokerage Company.

Mr. Wackerbarth: We object to that now as calling for a conclusion of the witness.

The Court: Objection sustained. [264]

Q. (By Mr. Hoppenstein): Were the facts as stated in the telegram of October 2nd, or the telegram to Southwest Brokerage commencing "Secured confirmation," were the facts therein stated true, Mr. Crane?

Mr. Wackerbarth: That is objected to as calling for a conclusion of the witness.

The Court: Objection sustained. The witness has testified repeatedly, and I have read his deposition, and every one of these that I pick up I read the same questions and answers. He sent the telegrams,

(Testimony of Raymond M. Crane.)

he got nothing in writing other than that he has had telephone conversations, and that is that.

Q. (By Mr. Hoppenstein): Did you request a written confirmation from Southwest?

A. As I recall, that was part of the original terms of the transaction.

Q. After you got the standard form, the Standard Memorandum of Sale agreement?

A. No, not after that. It wasn't what I wanted.

Q. Did you advise them that it wasn't?

A. No, I didn't because the ceiling went off and that was all there was to it. I dropped the deal when the ceiling went off because I talked to Mr. Kazanjian and I couldn't get [265] confirmation. He wouldn't deliver, so there was nothing I could do, and so I advised them.

Q. Mr. Crane, you did try to get Kazanjian to make a try? A. Sure I did.

Q. And Mr. Kazanjian took the view that because the ceiling was lifted that is why he didn't have a contract, isn't that correct?

Mr. Hayhurst: We object to that as calling for a conclusion and opinion of the witness.

The Court: Objection sustained. You can ask him about any conversations he had with Kazanjian.

Q. (By Mr. Hoppenstein): Didn't you have a conversation with Mr. Kazanjian asking him to make delivery? A. Yes, sir.

Q. Did Mr. Kazanjian then tell you because the ceiling was lifted he was not morally obligated to deliver?

(Testimony of Raymond M. Crane.)

Q. Didn't he tell you that?

A. Well, he told me that he felt that way and he wasn't going to deliver.

Q. Mr. Crane, your deposition was also taken on September [266] 10, 1946, wasn't it?

A. If that is what the record says, it was.

* * *

Q. I show you page 9 of your deposition, line 16, through page 10, through line 10 on page 10. Didn't you so testify?

A. (Examining deposition.)

The Court: That is the deposition of September 10, 1946?

Mr. Hoppenstein: Yes, sir.

The Witness: That is correct.

Q. (By Mr. Hoppenstein): At that time you testified that \$4 was the market price.

A. That is December 10th or 11th.

Q. 1944? A. That is right.

Q. That was the market price for U. S. No. 1 Emperor grapes, wasn't it? [267]

* * *

Q. So that your testimony yesterday of \$3.25 was incorrect?

A. The record will reveal that I testified yesterday that the prices that I testified to yesterday were between the period of October 9th through November.

Q. And from November on the prices did go up then?

(Testimony of Raymond M. Crane.)

A. It went up very sharply in December or about that time.

* * *

Redirect Examination

By Mr. Wackerbarth:

Q. The price that you are referring to, Mr. Crane, of \$4 or \$4.15, was that for U. S. 1 grapes?

A. Yes, sir, that was U. S. No. 1 grapes out of storage.

Q. And that is U. S. 1 out of storage?

A. Yes, sir.

Q. And that doesn't refer to U. S. 1 in storage as of October? A. No.

Q. Is that correct? A. Correct. [268]

Q. Now, Mr. Crane, you have heretofore testified with reference to the practice adopted by the trade in the use of Standard Memorandums of Sale and Standard Confirmations of Sale? A. Yes, sir.

Q. Have you produced in court here a set of Standard Confirmations of Sale?

A. Yes, sir. [269]

* * *

Q. I show you here Exhibit L, which is a document denominated Standard Confirmation of Sale, and it consists of three pages, a white page, a pink page and a yellow page. A. That is right.

Q. Is that the customary Standard Confirmation of Sale used by the produce trade, or was it the form used by the produce trade in 1944?

(Testimony of Raymond M. Crane.)

A. Yes, sir.

The Court: Throughout the country? [270]

The Witness: Yes, sir.

Q. (By Mr. Wackerbarth): Throughout the whole United States? A. Yes, sir.

Mr. Wackerbarth: Now, this is offered in evidence, your Honor.

The Court: Admitted.

(The document previously marked Respondents' Exhibit L for identification was received in evidence.)

Q. (By Mr. Wackerbarth): Mr. Crane, I want to direct your attention to this document here. Can you read for the benefit of the record the small type at the top there? A. Yes, sir.

“The broker or salesman on receiving notice of the seller's acceptance of the buyer's order shall fill out this Standard Confirmation of Sale in triplicate and present all three copies to the buyer for authentication by his signature. The broker or salesman shall also sign the three Copies on behalf of the seller and shall deliver one copy to the buyer and one to the seller and shall retain the third for his file. This Standard Confirmation of Sale as authenticated by the buyer and broker or salesman shall constitute the complete contract of sale and [271] neither party shall have the right to rely on oral representations or promises of the other. All modifications must be in writing and authen-

(Testimony of Raymond M. Crane.)

ticated in the manner provided above for this Standard Confirmation of Sale to which such modification shall refer. Unless the seller makes immediate objection upon receipt of his copy of this Standard Confirmation of Sale, showing sale was made contrary to authority given the broker or salesman, he shall be conclusively presumed to agree that the terms of sale as set forth herein are fully and correctly stated.”

Q. Now, Mr. Crane, when you sent the original telegram to Southwest Brokerage of September 26th, and when you sent the amended telegram of October 2nd presenting this offer to procure grapes and in which you used the words “subject to confirmation,” were you in that telegram referring to a confirmation by the use of a Standard Confirmation of Sale as known to the trade?

Mr. Hoppenstein: Just a minute. We object to that on the ground that it would be attempting to vary the terms of his own written instrument, and would be an attempt to invade the mental processes of Mr. Crane.

The Court: Objection overruled.

Mr. Hoppenstein: His intention not having been conveyed to the complainants—— [272]

The Court: This testimony goes to the custom of the trade. In other words, whether it was his intention to vary the custom of the trade or to follow the custom of the trade.

You may answer the question.

(Testimony of Raymond M. Crane.)

The Witness: Will you repeat the question?

* * *

The Witness: Yes, sir.

The Court: Had you used this form previously with Mr. Kazanjian?

The Witness: I don't recall that we had used that form specifically, no, except that we have used that form for years on all pre-season deals where it required a contract in writing.

Q. (By Mr. Wackerbarth): Now, for the benefit of the record, Mr. Crane, I want to show you a Standard Memorandum of Sale that has the printing [273] on the reverse side.

The Clerk: That will be Exhibit M.

(The document referred to was marked Respondents' Exhibit M for identification.)

Q. (By Mr. Wackerbarth): I show you Exhibit M, Mr. Crane, and ask you if that is the form of Standard Memorandum of Sale used in the produce industry during the year 1944?

Mr. Pines: We will stipulate that it is.

The Court: And that it was generally used throughout the country?

The Witness: Yes.

Mr. Pines: Yes.

Mr. Wackerbarth: We will offer it in evidence.

The Court: Admitted.

(Testimony of Raymond M. Crane.)

(The document previously marked Respondents' Exhibit M for identification was received in evidence.)

* * *

Q. Was it a custom in the produce trade in 1944, Mr. Crane, to use both the Standard Confirmation of Sale and the Standard Memorandum of Sale?

A. Yes. [274]

Q. Yesterday you testified as to the different circumstances under which they were used.

A. Yes, sir.

The Court: Is it stipulated that the one that was used here, the memorandum of sale, had all this same printing on the back?

Mr. Hoppenstein: Yes, your Honor. It is a standard form. [275]

* * *

Q. (By Mr. Wackerbarth): Mr. Crane, did you at any time ever receive a Standard Confirmation of Sale on the form Exhibit L signed by the West Texas Produce Company or the Central Fruit & Vegetable Company?

The Court: Or Southwest?

Mr. Wackerbarth: Or Southwest.

The Witness: No.

The Court: Or Red Lion?

The Witness: No. [276]

* * *

Q. (By Mr. Wackerbarth): I show you, Mr. Crane, the telegram to Jimmie Teel at Fort Worth, which is a part of the record in this original pro-

(Testimony of Raymond M. Crane.)

ceeding, dated December 11th. Now were you referring, Mr. [277] Crane, to U. S. 1 grapes out of storage as of that date? A. Yes.

Q. You were asked if you were paid a commission by Mr. Kazanjian in connection with the sale of grapes during the year 1944. Did you sell any grapes for Mr. Kazanjian after the ceiling went off on October 9, 1944? A. Yes.

Q. Prior to that time and during the portion of the year up to the time the ceiling went off, did you sell any grapes for Mr. Kazanjian? A. No.

Q. Did you sell grapes for any of the packing-houses during the time that the ceiling was on grapes, during the year 1944?

A. Without looking at the records specifically, I couldn't recall, couldn't make a positive statement, but I think that we did in some instance earlier in the season during the grape deal. Of course that particular year the ceiling was on, then it went off, then it came back on again.

Q. During the period of time that the ceiling was on, did you sell grapes for any packing house for a commission?

* * *

The Witness: I don't recall. [278]

Q. (By Mr. Wackerbarth): Did you have any agreement of any character with Mr. Kazanjian for the payment to you of a commission in connection with the sale during the period of 1944 when the ceiling was on? A. No, I did not.

* * *

(Testimony of Raymond M. Crane.)

Recross-Examination

By Mr. Hayhurst:

Q. The only written document that you ever received from Red Lion or John Kazanjian was the telegram of October 4, 1944, isn't that correct, Mr. Crane? A. Yes, sir.

Q. That is, pertaining to this transaction?

A. Yes, sir.

Q. You had no authorization from either Kazanjian or Central Fruit & Vegetable Company or West Texas Produce Company or Southwest Brokerage Company authorizing you to sell or buy grapes for them, did you, in the season 1944?

A. I think the record would speak for itself.

The Court: Other than those wires? [279]

The Witness: No, nothing other than that.

Q. (By Mr. Hayhurst): Other than the written documents that are in evidence here, you had no authorization in writing from any of those parties, did you, Mr. Crane? A. No, sir.

Q. Now your wire of October 3rd stated, "Will forward confirmation for your signature as soon as received air mail from buyers." You testified, I believe, and it is correct, is it not, that you never received such confirmation from any of the buyers?

A. That is right.

Q. And you never forwarded any confirmation whatsoever to Mr. Kazanjian? A. No, sir.

Q. And you never received any such confirma-

(Testimony of Raymond M. Crane.)

tion or any other document signed by Mr. Kazanjian other than the wire of October 4th?

A. No, sir.

Q. And the Standard Memorandum of Sale that you mentioned yesterday as having been received by you from the Southwest Brokerage, you didn't forward that to Red Lion, did you?

A. No, sir.

Q. I believe you testified that so far as you [280] recall now you made no sales whatsoever prior to the time the ceiling went off for John Kazanjian where he paid you a commission?

A. Not that I remember.

Q. Any grapes that you may have purchased from John Kazanjian during the period where ceilings were on, were immediately accompanied by cash deposit by you, is that correct?

A. Well, if there were any bought that was the terms, that we had to pay for them; yes.

Q. And you paid that to Mr. Kazanjian in Exeter?

A. I don't recall that we bought any because this was the beginning of the Emperor deal, but that would have been the case.

Q. There was some testimony yesterday, Mr. Crane, regarding the Federal Market News. Isn't it true that normally the market price is reflected in those Federal Market prices probably 25 cents or so a package higher than the reasonable market value? [281]

* * *

The Court: You can answer the question and

(Testimony of Raymond M. Crane.)

then explain if you care to, that is, if you can answer it.

The Witness: I would say in many instances, yes.

The Court: Now do you wish to explain?

The Witness: I would like to explain.

The Court: Very well.

The Witness: Due to the character of the business and the commodity, it depends on the validity of the market report because many times the market report advances on a certain day very rapidly even after the bulletin is printed or goes to press in the afternoon, and sometimes the actual tone of the market is not reflected in a government bulletin by reason of lack of activity or some character like that in relation to the market. And we in the trade generally feel that the quotations in the market news service are generally quite [282] high.

The Court: They gather the information by calling people?

The Witness: Yes. They call each shipper every day and ask them what they are getting for grapes, and of course most of them are getting the top of the market or more.

Mr. Hayhurst: That is all.

The Court: On your Federal Market Service Report, I suppose that it is widely taken and distributed, but I take it that it is also regarded in the trade as more or less of a trend?

The Witness: Yes. It is regarded as a trend,

(Testimony of Raymond M. Crane.)

and then it has to be understood that there is a Market News Service that reflects major shipping points during active shipping season as to the f.o.b. carload price.

Then there is a Market News Service on prices that we consider jobbing prices to the retail stores, that is published in San Francisco, Los Angeles, Portland, Seattle, and all terminal markets that reflect the prices to the retail store after—well, as an example the market news report they showed me yesterday was of San Francisco, which would normally reflect a transportation charge to San Francisco, plus the normal profit for the jobber before it goes to the retailer. That would be published in the San Francisco report. [283]

* * *

Recross-Examination

By Mr. Hoppenstein:

Q. Mr. Crane, you hold yourself out as an experienced jobber, familiar with the trade practices in the fresh fruit and vegetable industry, do you not?

A. I have been in the business a long time.

Q. Now will you point out what the differences are in the form of the Standard Memorandum of Sale and the Standard Confirmation of Sale?

Mr. Hayhurst: We would object to that on the ground it is argumentative. The two documents speak for themselves. Again we renew our objection to the testimony regarding the trade custom.

(Testimony of Raymond M. Crane.)

The Court: The question is argumentative. Objection sustained.

Q. (By Mr. Hoppenstein): Mr. Crane, it is true, is it not, that you use the Standard Memorandum of Sale agreement more frequently than the Standard Confirmation of Sale agreement?

* * *

A. It depends on the individual.

Q. Have you had many business transactions with Southwest [284] Brokerage Company?

A. Not very many; no.

Q. During your dealings with them, did you receive the Standard Memorandum of Sale agreement from them? A. Yes.

* * *

Q. When you received such Standard Memorandum of Sale agreements, would you reject them and ask for a Standard Confirmation of Sale agreement? A. We have; yes.

Q. Did you do so in this case?

A. Not in this case because the ceiling went off.

Q. Except for the ceiling, it is true, is it not, that you consider the Standard Memorandum of Sale agreement submitted to you a submission to bind the deal as a custom and practice in the [285] trade?

* * *

A. We didn't figure that the deal was made or consummated. It was in between. That is the way I felt about it.

* * *

(Testimony of Raymond M. Crane.)

Q. Mr. Crane, on April 28, 1950, when your deposition was taken, at page 19, line 10, I will ask you if this question wasn't asked you and you answered:

"Q. As agent for the buyer, did you consider the telegram sent to you by Mr. Kazanjian, saying that the deal which you made was satisfactory, a sufficient memorandum of the contract to bind the deal?

"A. Under normal circumstances I would consider it sufficient."

A. That is correct.

Q. And as a usage of the trade, that was considered sufficient, wasn't it?

A. You are talking about two different things. You [286] are talking about a telegram from Mr. Kazanjian.

Q. Yes. I am talking about the telegram from Mr. Kazanjian.

A. A minute ago you were talking about a memorandum, one of these memorandum of sale forms.

Q. I am going to go back to that. Didn't you testify to that? A. Yes.

Q. That the telegram from Mr. Kazanjian was sufficient?

A. That is right. The telegram from Mr. Kazanjian, in my understanding, is the same as a signed document.

Q. You considered that the telegram was suffi-

(Testimony of Raymond M. Crane.)

cient as a Standard Confirmation of Sale agreement, didn't you? A. Yes, sir.

Q. And that is considered in the trade sufficient, is it not? A. Not in all instances; no.

Q. Well, it is considered sufficient by the Department of Agriculture, is it not? A. Yes.

Q. And as a broker, you are licensed by the Department of Agriculture, are you not?

A. We have to be.

Q. And in connection with your business, the rules and regulations of the Department of Agriculture are part and [287] parcel of the custom of the trade of your transacting your business, isn't that true?

A. Partially. However, that depends a lot on the individual firm. I know lots of firms that won't make a transaction unless it is a signed confirmation and they have a signed confirmation.

The Court: That is, on these forms?

The Witness: Yes.

Q. (By Mr. Hoppenstein): But as far as the custom of the trade is concerned, the Standard Memorandum of Sale is considered sufficient too, isn't it?

A. That is entirely an individual matter. I couldn't answer for them.

The Court: I understood you to testify yesterday that it is the only document that is frequently used when there is immediate delivery of the produce.

(Testimony of Raymond M. Crane.)

The Witness: Generally it is used by terminal market brokers, not by shippers.

The Court: Terminal market brokers when the produce is there?

The Witness: That is right.

The Court: When the goods are there?

The Witness: That is right. [288]

Q. (By Mr. Hoppenstein): Mr. Crane, how many written confirmation of sale agreements did you get from Mr. Kazanjian in disposing of the cars you disposed of for him in October and November of 1944?

* * *

The Witness: No.

Q. (By Mr. Hoppenstein): You didn't get any?

A. You mean a signed confirmation like you are talking about here?

Q. Yes. A. No, but we got a telegram.

Q. Did you get the Standard Confirmation of Sale agreements from your purchasers?

A. No.

The Court: Did you sell any futures?

The Witness: I don't think we did. I don't think we sold any. [289]

The Court: In other words, you just sold carload lots?

The Witness: That is right. We sold them and they were for future delivery.

Q. (By Mr. Hoppenstein): They were for future delivery, weren't they, Mr. Crane?

A. That is right.

(Testimony of Raymond M. Crane.)

* * *

Q. Mr. Crane, after you received the wire from Mr. Kazanjian and after you received the Standard Memorandum of Sale agreement from Southwest Brokerage, please state if you considered, in connection with the custom of the trade and in connection with this transaction, any other documentary evidence necessary before there would be a closed deal for the sale of these 10 cars of [290] grapes.

* * *

The Witness: Under normal circumstances I would consider it satisfactory. However, in this particular instance——

Mr. Hoppenstein: We object to——

The Court: He can explain his answer.

The Witness: In this particular instance we fully expected to receive a signed confirmation of sale which we requested.

The Court: Both from the buyer and the seller?

The Witness: From the broker. The broker normally [291] makes that out and forwards it to us when he requests it, and then we take it and deliver it to the seller and get him to sign it.

Q. (By Mr. Hoppenstein): Mr. Crane, did you request that of Southwest Brokerage?

A. I think we did; yes. I think we did request that in the original transaction. Then we got the broker's standard memorandum and the ceiling went off and that was all there was to it.

* * *

(Testimony of Raymond M. Crane.)

Q. Mr. Crane, I believe immediately before the recess I called your attention to page 20 of the April 28, 1950, deposition, at line 23:

“Q. Now, my question to you, Mr. Crane, is: Did you consider any other documentary evidence necessary before there would be a closed deal?

“A. Only the government inspection, that the merchandise was U. S. No. 1 grade.” [292]

Did you so testify?

A. That is right.

Q. Mr. Kazanjian did not submit to you the U. S. No. 1 government inspection certificates, did he?

The Court: That has been asked and [293] answered.

* * *

Recross-Examination

By Mr. Hayhurst:

Q. Any sales that you made for John Kazanjian after the ceiling price was off in 1944 were made under different circumstances than those existing while the ceilings were on, is that correct?

A. Yes, sir. [294]

* * *

The Witness: In relation to my previous testimony, when Mr. Hoppenstein was questioning me, I understood that he was referring to the confirmation from Mr. Kazanjian, not referring to the confirmation from the buyer.

Mr. Pines: I move that that statement be stricken on the ground that it is self-serving. [295]

The Court: He can explain his answer. He is entitled to that. Motion denied.

* * *

(Witness excused.)

* * *

HARRY BOCKSTEIN

recalled as a witness by and on behalf of the complainants in rebuttal, having been previously duly sworn, was examined and testified further as follows:

The Court: You were sworn before, Mr. Bockstein?

The Witness: Yes.

Direct Examination

By Mr. Hoppenstein:

Q. You are one of the partners of the West Texas Produce Company? A. I am. [296]

Q. How long have you been engaged in the produce business? A. Since 1905.

* * *

Q. Do you know what the custom of the trade in the produce business was in 1944?

* * *

A. Yes.

Q. State whether or not it was the custom of the trade to transact business under Standard

(Testimony of Harry Bockstein.)

Memorandum of Sale agreements submitted by brokers.

A. It was always just sales, just the broker would bring a sales agreement, a memorandum of sales or some of them called them confirmation, but it didn't make any difference.

Q. Do you recall in your experience in the produce [297] business being required to sign a Standard Confirmation of Sale agreement?

A. I don't. I don't recall.

Mr. Hoppenstein: That is all.

The Court: Did you ever in your conduct of the business require confirmation of sale to be signed by the seller?

The Witness: I did not.

The Court: You never received one?

The Witness: No. I don't think I ever received one. I don't recall.

The Court: You have never seen one?

The Witness: I didn't say I didn't see one, but I don't recall of ever seeing that one because I have always done business with a broker, and he would bring me the confirmation. The seller might be 2000, 3000 miles away.

* * *

Cross-Examination

By Mr. Wackerbarth:

Q. Mr. Bockstein, I show you Exhibit L and ask you if you have ever seen a Standard Confirmation of Sale like that before.

(Testimony of Harry Bockstein.)

A. (Examining exhibit.) I might have but I have never [298] signed one.

Q. You have never signed one? A. No.

Q. In your 30 or 40 years in the business?

A. Yes. I don't recall ever signing one.

The Court: Or ever making a transaction where the seller signed one?

The Witness: Where the seller signed one?

The Court: Yes, where you got a document like that signed by the person with fruit or vegetables or produce to sell.

The Witness: No, I don't recall of ever getting one where they have signed one. The only ones I ever got was from the broker and the seller was sent a bill.

Q. (By Mr. Wackerbarth): Mr. Bockstein, did you ever sell any carloads of produce for future delivery? A. Did I ever sell any?

Q. Yes. A. I don't think so.

Q. You don't think you ever did? A. No.

Q. Practically all of the sales that you make are where you have the merchandise available for present delivery?

A. I haven't sold very many—I am not a broker or [299] distributor, I am a wholesale man.

The Court: You sell to the retailer?

The Witness: I sell to the retailer.

Q. (By Mr. Wackerbarth): When you sell to the retail trade, do you take a Standard Memorandum of Sale?

(Testimony of Harry Bockstein.)

A. I don't make no memorandum of sale at all.

Q. You never have?

The Court: You just invoice them?

The Witness: I just invoice them.

Q. (By Mr. Wackerbarth): During this 40 years have you ever acted as a broker?

A. No, sir.

Q. So you do not know what the custom of the trade is then from the standpoint of a broker?

A. I have done business with brokers right along.

Q. But do you know what the custom of the brokerage trade is with reference to the sale on future deliveries?

A. Well, it is just the same way as it is in every other business and every other deal. I would get either a confirmation or Standard Memorandum of Sale. I never did pay any attention to the heading of it.

The Court: You do not know whether it was signed or was not signed, you merely got it from the broker? [300]

The Witness: I got it from the broker. He signs for the buyer and the seller.

Mr. Wackerbarth: That is all.

The Court: Step down.

(Witness excused.)

The Court: Do the complainants rest?

Mr. Hoppenstein: Yes. [301]

MEMORANDUM OPINION

The Court: The first thing to decide is whether or not there was a contract between Kazanjian and the complainants here. In my judgment there was not a meeting of the minds, and the motion for a judgment of dismissal on behalf of Kazanjian should be granted.

I cannot read the telegrams exchanged between the parties as counsel for complainants do. Whether you take the series of telegrams beginning with September 26th and winding up with the one sent at 5:25 p.m. on October 2nd, or whether you take just the telegrams of October 3rd and October 4th exchanged between Crane and Kazanjian, it seems to me that reading them all together it called—the first series called—for a confirmation in writing to be given by both parties, that is to say, both principals under the contract, or rather under the offer which was made on September 26th and which was not changed by the telegram of October 2nd, or the exchange of teletype messages between the parties on October 2nd.

The telegram to Kazanjian on October 3rd by Crane, as counsel pointed out in his analysis, could be considered a proposal but it certainly was not accepted. I cannot read the [392] telegram of October 4th as an acceptance, nor was there any oral testimony here upon which I could base a conclusion that there was an acceptance.

Mr. Kazanjian testified that he did not know anything about the telegram originally of Septem-

ber 26th that Crane had sent out, that he did not know its contents and had never heard of it until long after it had occurred. So he certainly could not have been bound, and there is no testimony that disputes it, by anything that was stated in those telegrams prior to October 3rd.

The \$2.50 price per lug is clear, the black Emperors is clear, five cars on a basis of \$750 and ten cars on a basis of \$1000 is clear, but the telegram to Kazanjian tied in the balance of his whole crop from Crane, that is to say, depending upon Mr. Crane being able to handle Kazanjian's whole crop that year or the balance of cars, as he put it.

The \$1000 deposit to be paid upon receipt U. S. 1 government inspection he proposed, but Kazanjian did not accept that \$1000 deposit on ten cars and \$750 on five cars. The phrase "said deposit to be paid immediately on inspection at shipping point" was certainly a rejection of that offer, and if it could be considered a counterproposal it was made on October 4th after the complainants claimed that they had entered into a contract with Crane, the broker or their forwarder, whichever way you may look at it, for delivery of the [393] grapes. And the proposal in the last clause or sentence in the telegram of October 3rd, "will forward confirmation for your signature as soon as received air mail from buyers," I cannot see how anything could be any clearer than that language makes it, that it was intended that the buyers should mail by air mail a confirmation and that it should be sent to Kazanjian for his signature.

Now the proposed memorandum of sale, which is in evidence here, as well as the Standard Confirmation of Sale, which is likewise in evidence as an exhibit, are both forms that are well known in the trade. They appeared to have been prescribed by some government agency or another. The memorandum of sale has no place on it in the form for the signature for either the buyer or the seller, whereas the Standard Confirmation of Sale in its form has a place for both the signature of the buyer and the seller. True, the seller could sign by broker or salesman but in that event you had to sign the certificate at the bottom.

So it seems to me that either that particular form or some other writing to be signed by both of the parties was contemplated in that offer of October 3rd which Kazanjian said he would accept. But it was never done. It was never a deal until that confirmation for signature of both parties as proposed by Mr. Crane, and as accepted by Mr. Kazanjian had materialized, and it never did. [394]

Moreover, the matter of storage, it is not clear in the October 3rd telegram because Mr. Crane did not say anything about storage but Mr. Kazanjian did. He said "you to arrange for storage as agreed." Now there was parol testimony here to the effect that Mr. Crane was to arrange to get the storage, and it certainly was not clear as to who was to pay for it except that Mr. Kazanjian testified that he was not to pay for it, and it would seem very logical, in view of the fact that the ceiling was \$2.50 and the condition of the market at that

time, he had no difficulty selling them and demonstrated that after the ceiling went off that the grapes went up, that it does not seem logical at all to me that Mr. Kazanjian would commit himself to pay 22 cents a crate total, 7 cents in charge and 5 cents a month for three months, and then reduce his price from \$2.50 down to the lower price of approximately \$2.28, which would have occurred.

So I cannot see that there was ever any meeting of the minds or ever any contract signed by the party to be charged. In the first place, there was no meeting of the minds; in the second place, there was never any contract signed by the party to be charged at all. The proposal which Mr. Kazanjian signed on October 4th was never accepted or never acted upon by the complainants in this case.

Moreover, I am satisfied that the cases, the Georgia Peanut case and the Wood Lumber Company case, are controlling [395] about requiring the authority of an agent to be in writing. Mr. Crane's authority was not in writing. There is nothing in the evidence to show that prior to October 2nd, which is the date that the complainants rely upon as being the date of the agreement, that Mr. Kazanjian ever gave Crane any authority in writing. In fact, not at any time other than it might be considered the October 4th telegram to Crane which might be considered as authority to go ahead and make the deal on that basis, which was not done.

If you take the other horn of the dilemma as to whose agent Mr. Crane was, there was certainly no

authority in writing to Crane from either one of the principals in Texas or the Southwest Brokerage Company, even assuming that they had authority or that the Southwest Brokerage Company had authority to act, there is nothing in writing from them to Crane authorizing him to commit them or authorize him to negotiate this proposed sale with Mr. Kazanjian.

Now has there been any ratification of that act of Crane if he was the agent of the complainants here by the filing of the case. In fact, they allege just the contrary. They allege that Crane acted both as a principal and as an agent of Kazanjian. So there is no ratification there, nor is there any ratification of it by filing this case in this court. In fact, the complainants here did not file the case in this court. [396]

Furthermore, I do not think it is necessary for the decision but I will indicate to counsel, because it has been known that I have been wrong before and have been reversed by the higher courts, that in the event some appellate court should disagree with me about whether there was or was not a contract, I will hold that as a matter of fact the ceiling price was \$2.50 and that the \$50 brokerage, or whatever sum it was to be paid, was to be made in connection with the sale and depended upon the sale, and therefore was in violation of Maximum Price Regulation 426, which was the controlling regulation in this instance.

In the event further that I am reversed in that connection, as well as the other one, I find as a fact

that on or about October 24th, that is to say, if I am reversed and it is held to be a contract, that on or about October 24th the complainants here acquiesced in the repudiation in so far as fixing a date for the accrual of damages, and I do so under the authority of the case of *Compania Engraw v. Schenley Distilleries* (181 F. (2d) 876) heretofore cited to counsel and decided by the Circuit Court in this district comparatively recently.

I find further as a fact that the testimony here that the price was \$3 to \$3.50—I have forgotten the exact price in that telegram by the Nash-De Camp Company—but I do not think that one single price would prevail, but the testimony [397] of Mr. Kazanjian and the testimony of Mr. Crane was that the price ranged between \$3 to \$3.50 between the dates of October up to the beginning of December, when they went higher, but I hold that on or about October 24th is the controlling time and that an average price would be \$3.25 a crate for the total tonnage which the plaintiffs would be entitled to in the event it is ultimately held to be a contract, which would be 75 cents a lug maximum. In other words, in the event the court holds that my ruling in connection with the OPA is wrong, it will be 75 cents a lug maximum damages for an average of 1105 lugs per car, or a total of 10 cars, or a total of 11,050 lugs, or a total in dollars—well, it is merely a matter of calculation.

That, however, is merely a contingent finding which counsel may or may not if they desire put into their findings of fact and conclusions of law.

I think that that disposes of the contentions which have been made of the parties. In connection with the contention by Mr. Crane, while it is urged here that under the law there was a possibility that Mr. Crane might have been held liable in damages, nevertheless the position which the complainants have taken that he was their agent precludes entirely a court from granting judgment against Mr. Crane because there is no charge here that he wilfully or fraudulently or for a fraudulent purpose made any statements to the complainants here to [398] the effect that he had confirmation. I have held that there was no contract and Crane did not have any authority to send those telegrams.

So the judgment of dismissal will be granted in favor of both respondent Crane and respondent Kazanjian. The parties will prepare findings of fact, conclusions of law and judgment accordingly and serve them. [399]

* * *

Certificate

I hereby certify that I am a duly appointed, qualified and acting official court reporter of the United States District Court for the Southern District of California.

I further certify that the foregoing is a true and correct transcript of the proceedings had in the above-entitled cause on the date or dates specified therein, and that said transcript is a true and correct transcription of my stenographic notes

Dated at Los Angeles, California, this 29th day
of September A.D., 1950.

/s/ AGNAR WOHLBERG,
Official Reporter.

[Endorsed]: Filed Feb. 27, 1951.

[Title of District Court and Cause.]

REPORTER'S TRANSCRIPT OF HEARING
ON MOTION

November 6, 1950

Appearances:

For the Plaintiff:

HARRY A. PINES, ESQ.

975 Subway Terminal Building,
Los Angeles 13, California.

For Defendant Associated Fruit Distributors:

HENRY O. WACKERBARTH, ESQ.

601 Fay Building,
Los Angeles 13, California.

For Defendant Red Lion Packing Company:

NELSON HAYHURST, ESQ.

1014 Helm Building,
Fresno 1, California.

The Clerk: No. 8244, Civil, Central Fruit &
Vegetable Company v. Associated Fruit Distribu-
tors, et al.

Mr. Pines: Ready in that, your Honor.

The Court: How long do you want to argue that?

Mr. Pines: I don't think it should take more than a few minutes. What we are asking for is the privilege of presenting oral argument on the motion for a new trial.

The Court: I have read the motions and arguments and supporting authorities. In the parlance of the street, they kind of leave me sort of cold.

Mr. Pines: I hate to waste the court's time and my own, but I am so firmly convinced of the correctness of our position that I wanted the opportunity of arguing. Perhaps the very fact that the court is left cold by the written documents leads me to believe that I can persuade the court orally.

The Court: I cannot see any new point or new matter of law—can you, Mr. Wackerbarth?—brought up or touched on on the motions for a new trial.

Mr. Wackerbarth: I am afraid I will have to make an honest confession. I have been away from my office for two weeks on vacation.

The Court: How about you, Mr. Hayhurst? [2*]

Mr. Hayhurst: I must also confess I have been engaged in a trial, in a matter that arose involving certain contempt matters, as your Honor recalls, and they take considerable time and I unfortunately have not had too much time to examine it either.

Mr. Pines: Might I make one statement? Part of this motion is based upon law that was not avail-

*Page numbering appearing at top of page of original Certified Transcript of Record.

able to this court at the time of the trial, a decision of the Third Circuit Court of Appeals, and this question of the statute of frauds, which I believe is the first instance in which any circuit court has passed upon the relevancy of the statute of frauds to an action brought under the Perishable Commodities Act, and under the decision of the Third Circuit Court of Appeals it is the statute of frauds and the statute, such as the one we have in California, is not even available as a defense in this action. That was not argued to the court at the time.

The Court: No.

You will recall my decision was not based on that alone, but I held there was never any meeting of the minds anyway, either in writing or orally.

Mr. Pines: Well, if we go up on appeal and if that is the only basis of sustaining the court's decision, we would at least limit these issues rather than to have them go up on a number of other issues. [3]

The Court: I also feel that regardless of the Third Circuit Court of Appeals that the defense of the statute of frauds is available. In other words, I have read your brief through but I could not see how there was anything there to convince me to change my mind concerning the positions on the law which I took at the time of the trial.

Mr. Pines: If the court please, I don't want to be persistent, but I might state this, I filed a rather voluminous——

The Court: Persistence is a virtue.

Mr. Pines: Thank you.

I filed objections to these findings and I couldn't see how the court, if it heard oral argument on it, could possibly turn us down, that is, in certain instances.

The Court: That is the way I used to feel when I practiced law, I could not see how the court could possibly reach the decision it did.

Mr. Pines: We also ask to correct typographical errors which misquoted some exhibits. We ask that the findings be separately stated so that when we go up on appeal we will not have to call the appellate court's distinction to the 14th paragraph of Paragraph IV of the findings which is in accordance with good practice and according to the rules. I think had I had the opportunity of presenting this matter orally, perhaps the court might have noted that. [4]

The Court: No, any typographical errors, since I do not check findings for them, I leave that to counsel who has prepared them.

In so far as the basis of my decision is concerned, I do check them and they were in accordance with the basis of my decision.

Mr. Pines: I have made my motion.

The Court: Do you desire to file any reply memoranda, either one of you, or both of you?

Mr. Wackerbarth: If there is going to be an argument on it, yes, I would want to.

Mr. Hayhurst: Yes.

Mr. Wackerbarth: I assume that court is taking

the position now that you are going to deny—I may be wrong in this—deny the motion and it is not necessary to set it down for hearing.

The Court: I cannot see any virtue in hearing further argument on it. If counsel have not read it and desire time, maybe you will see some error that I was led into about which counsel is complaining.

Mr. Wackerbarth: I think we should give it consideration. As I say, I have been out of my office for two weeks and if there is any error in there that is apparent to me, I will come in and admit it.

The Court: I will give both parties 10 days to file a [5] reply to the plaintiff's motion for a new trial and points and authorities. They were served on counsel?

Mr. Hayhurst: Yes, sir.

Mr. Pines: Is the court granting the oral argument on this matter?

The Court: No.

Mr. Pines: May we have the privilege of replying to the replies?

The Court: Yes.

Mr. Pines: 5 days thereafter?

The Court: That is right.

Mr. Pines: Thank you.

The Court: 10 and 5, and at the end of the 15 days the mater will stand submitted.

Mr. Pines: Thank you. [6]

Certificate

I hereby certify that I am a duly appointed, qualified and acting official court reporter of the United States District Court for the Southern District of California.

I further certify that the foregoing is a true and correct transcript of the proceedings had in the above-entitled cause on the date or dates specified therein, and that said transcript is a true and correct transcription of my stenographic notes.

Dated at Los Angeles, California, this 24th day of February, A.D. 1951.

/s/ AGNAR WOHLBERG,
Official Reporter.

[Endorsed]: Filed Feb. 27, 1951.

PLAINTIFFS' EXHIBIT No. 2

[Title of District Court and Cause.]

DEPOSITION OF JOHN C. KAZANJIAN
taken on behalf of Complainants and Appellees, at
Suite 975 Subway Terminal Building, Los Angeles
13, California, on Friday, April 28, 1950, at 2:00
p.m., before Byron Oyler, a notary public within
and for the County of Los Angeles and the State of
California, pursuant to oral stipulation.

Apperances:

For Central Fruit & Vegetable Co., and West
Texas Produce Company, Complainants and
Appellees:

HARRY A. PINES and
J. MANUEL HOPPENSTEIN, by
HARRY A. PINES, ESQ.

For Raymond M. Crane, dba. Associated Fruit
Distributors of California, Respondents and
Appellees:

HENRY O. WACKERBARTH, ESQ.

For John C. Kazanjian, dba Red Lion Pack-
ing Company:

RALPH MORADIAN and
AYNESWORTH & HAYHURST, by
L. NELSON HAYHURST, ESQ.

Plaintiffs' Exhibit No. 2—(Continued)
(Deposition of John C. Kazanjian.)

JOHN C. KAZANJIAN

called as a witness on behalf of Complainants and Appellees, having been first duly sworn, deposed and testified as follows:

Direct Examination

By Mr. Pines:

Q. Your name is John C. Kazanjian?

A. That is right.

Q. You do business as the Red Lion Packing Company? A. That is right.

Q. Is that a fictitious firm name or sole proprietorship on your part? A. Yes.

Q. In September and October of 1944 and thereafter you were doing business as the Red Lion Packing Company? A. Yes, I was.

Q. What is your business?

A. Farming, packing and shipping of grapes.

Q. Any other commodities that you deal in?

A. I also have some plums.

Q. You know Mr. Crane doing business as Associated Fruit Distributors of California for a period of around ten years?

A. I think it is seven years.

Q. Seven years?

A. I think the first time we did business and met each [3*] other was in 1943, to the best of my recollection.

Plaintiffs' Exhibit No. 2—(Continued)

(Deposition of John C. Kazanjian.)

Q. Have you been doing business with him off and on since 1943? A. Yes, we have.

Q. As a matter of fact, during the year 1943 he handled all of your grapes, didn't he?

A. No, not all of them.

Q. A substantial portion of them?

A. I don't recall just what portion, but I know he did not handle all of them.

Q. Did he handle them as your broker or as procurement agent of other parties?

A. That is asking a very broad question because for a portion of that year we had a ceiling and for the last portion the ceiling was taken off of grapes which changed the picture entirely.

Q. During the time there was no ceiling Mr. Crane sold the grapes as your agent, did he not, and you paid him a commission?

A. If you will tell me which cars of grapes you are talking about I can give you a better answer.

Q. Generally before the advent of the OPA ceiling did Mr. Crane at least on some occasions sell grapes for you and did you pay him a commission as broker?

A. No. In 1943 the first year I dealt with Mr. Crane to the best of my recollection there was a ceiling on grapes [4] and I would pack the grapes and bill them Red Lion Packing Company to Red Lion Packing Company at an eastern destination. Before I made a diversion of these grapes I always got my check for the grapes before the diversion.

Plaintiffs' Exhibit No. 2—(Continued)
(Deposition of John C. Kazanjian.)

In 1943 Mr. Hoover, who worked for Mr. Crane, spent most of his time in Exeter and whenever he paid me for a car of grapes I changed title to the Associated Fruit.

Q. Your place of business is in Exeter, California, isn't it?

A. In Exeter, yes. That is the way we had been dealing in 1943 and 1944.

Q. Can you tell me whether or not, if not all, isn't it a fact that most of your grapes were handled through Associated in 1943 and 1944?

A. No.

Q. What other concerns did you sell those grapes through?

A. Well, most all of the sales during the ceiling were direct sales. The place used to swarm with buyers.

Q. Did Mr. Crane procure purchasers for you in 1943 and 1944?

A. My honest answer to that is I don't know whether Mr. Crane ate the grapes himself or what he did with them. He paid me by check and I diverted the cars to him.

Q. Mr. Hoover stayed around your place of business quite a bit of the time didn't he? [5]

A. Yes, he did.

Q. What was his purpose for being there?

A. His purpose in being there was to pay me for the grapes so that I could transfer title to him.

Plaintiffs' Exhibit No. 2—(Continued)

(Deposition of John C. Kazanjian.)

Q. You knew Mr. Hoover was not buying the grapes?

A. I knew Mr. Hoover was not buying the grapes, you say?

Q. That is right.

A. Well, sir, during the ceilings, like I said, the office was swarming with buyers. Mostly they were direct eastern buyers. They were not only buying at ceiling price, but they were offering from \$300 to \$500 in the black market in order to get hold of the grapes. Mr. Hoover was just another man in the office fighting for grapes. When we put out two or three cars of grapes a day we had twenty people begging for one car a day or one car a week or two cars a week. That was the picture under the ceiling. We never asked them what they were going to do with the grapes. We accepted the money and transferred title to the grapes.

Mr. Wackerbarth: Off the record.

(Discussion held off the record.)

Mr. Pines: Back on the record again.

Q. Mr. Kazanjian, didn't you tell Mr. Crane in September of 1944 that you were going to have fifteen carloads of grapes that you would like to put into storage for [6] delivery in December of 1944?

A. No.

Q. You did not?

A. Mr. Crane told me that he had storage space

Plaintiffs' Exhibit No. 2—(Continued)

(Deposition of John C. Kazanjian.)

and asked me if I would be interested in storing some.

Q. In other words, the discussion was initiated by Mr. Crane? A. That is right.

Q. And not by yourself? A. That is right.

Q. Did he come to you personally or did he telephone you on that?

A. We used to talk on the telephone sometimes two or three times a day or sometimes every other day, but we were continually in contact with each other.

Q. That continued on through the end of 1944, didn't it? A. That is right.

Q. In September, 1944, did you know that he sent out a wire to thirteen brokers throughout the United States advising that he could book fifteen carloads of grapes? A. Absolutely not.

Q. On October 2, 1944, you received a telephone call from Mr. Crane, did you not, advising you that he had sold fifteen carloads of grapes at 2.50 net to you for delivery in December? [7]

A. No. I talked to him, but that was not the exact substance of the conversation.

Q. Referring to that telephone conversation on October 2, 1944, I will ask you to relate to us what was said between the two of you at that time?

A. May I go back a little further and bring it up to date? I would like to tell you what went into the discussion of this storage deal on the fifteen

Plaintiffs' Exhibit No. 2—(Continued)

(Deposition of John C. Kazanjian.)

cars. This conversation was the follow-up of previous conversations and no different.

Q. I will let you tell it to us in your own words.

A. All right.

Q. Try to fix dates as much as possible.

A. Mr. Crane contacted me and said he had storage space. Storage space was very hard to find at that time. During the war I imagine the Government was using quite a bit of storage space and it was at a premium. He asked me if I would be interested in putting some cars in storage which I was, because according to the ceiling setup there were created markups and if I could hold the grapes until December 10 I could get the additional markup.

Mr. Crane said that he would give me that storage space providing I would handle all of the grapes through him. In other words, he had something valuable to offer and in exchange he wanted this additional revenue and wanted me to handle all of the rest of the grapes through him. He [8] said if I wouldn't do it he had other shippers who would give him additional business on the strength of this fifteen car storage space.

I told him if he could make proper arrangements to submit a deal on the storage, but not to tie it in with the rest of my grapes at the time. I laid down several conditions that I would insist on before I would go into a storage deal. The conversation on

Plaintiffs' Exhibit No. 2—(Continued)

(Deposition of John C. Kazanjian.)

October 2 was in line with a previous conversation. I restated the terms of what I would want before I made a deal. He never did tell me he had a deal made. We were just talking business.

Q. It is your statement on October 2 you did not authorize him to confirm a deal to Fort Worth and Dallas for ten carloads of grapes?

A. Absolutely not. As a matter of fact, I was never told who he was dealing with or whether he was buying these grapes for himself or who he was buying them for. The principals or the agents or whoever he was dealing with were never revealed to me.

Q. On October 2, 1944, didn't you tell him that you would accept \$2.50 net to you per lug for the grapes with respect to fifteen carloads, the understanding being that a thousand dollar deposit per carload would be paid on Government inspection as to ten cars and \$750.00 a car deposit would be paid on Government inspection as to five cars? [9]

A. This is the October 2 conversation?

Q. That is right.

A. The telephone conversation you are referring to?

Q. That is right.

A. That was part of the conversation, part of the things I demanded. That was the price structure. In addition to that I also insisted that I get paid cash in Exeter at the time of packing. I insisted that the buyer assume all risks in storage.

Plaintiffs' Exhibit No. 2—(Continued)

(Deposition of John C. Kazanjian.)

In other words, there wasn't enough markup to justify me assuming the risks in storage. I wasn't going to guarantee U. S. No. 1 out of storage.

The third thing I insisted on with Mr. Crane was that this deal was going to be independent and not be tied in with the rest of my grapes. I wasn't going to tie in all of my grapes on the strength of this fifteen cars of storage space.

Q. Did Mr. Crane tell you he had sold grapes for your account on October 2, 1944? A. No.

Q. He did not tell you that?

A. He didn't say he had sold grapes, no. He said he was working trying to get the deal that I wanted.

Q. On that same day did you receive a telegram from him advising you that he had sold for your account fifteen carloads on the basis of \$2.50 a lug net to you?

A. Is that the October 3 telegram you are referring to? [10]

Q. I believe it is October 2.

Mr. Wackerbarth: It is the 3rd, counsel.

Mr. Pines: I stand corrected. If you have it there, perhaps it is October 3.

The Witness: Yes. I received a telegram from Associated Fruit dated October 3, 1944.

Mr. Pines: I call your attention to the fact that the telegram starts off with the following language:

"Referring telephone have sold for your account

Plaintiffs' Exhibit No. 2—(Continued)

(Deposition of John C. Kazanjian.)

basis 2.50 lug net to you block Emperors mentioned . . .” et cetera.

Q. Mr. Crane, does that refresh your memory on that occasion, that is, in the telephone conversation that he advised you he had sold those grapes for your account?

A. I think the telegram here—

Q. My question is, with reference to the telephone conversation in which he told you he had sold these grapes, does that refresh your memory now as to that telephone conversation to the extent that you recall he did tell you he sold those grapes for your account?

A. No, it doesn't, and I don't think the telegram infers that.

Q. What is your interpretation of that telegram?

A. My interpretation would be this: Referring to the conversation we had and relative to fifteen car storage deal and in reference to the conditions you laid down I have sold [11] on account—and follow it from there.

Q. Is that the way you understand it, in this telephone conversation with respect to these terms which he mentions in this telegram that he had sold for your account?

A. My interpretation is in referring to the telephone conversation we had regarding fifteen cars of storage grapes that he went ahead and sold on the basis he specifies and in which I replied.

Plaintiffs' Exhibit No. 2—(Continued)

(Deposition of John C. Kazanjian.)

Q. Does that refresh your recollection of the telephone conversation, that he told you those things in the telephone conversation?

A. No. I just got through telling you my recollection of what the telephone conversation was. I laid down the principal conditions I would demand before I made a deal, before I would make a deal.

Q. Is there anything in this telegram to you from Mr. Crane any different to the terms and conditions which you laid down?

A. Yes, sir. This wire is very vague on the conditions that I insisted on and I was trying to clarify them and that is why I made this counter offer in my wire to him insisting on the same things I insisted on all the time. It is very vague in his wire and doesn't bring it out at all.

Q. Do you have the telegram in front of you that you sent to Mr. Crane? A. Yes. [12]

Q. Will you point out to me wherein your telegram to Mr. Crane, which is dated October 3—

A. October 4.

Q. —wherein you said to him that any of the terms that he outlined in his telegram to you were to be changed?

A. Yes. If I was willing to take the terms he offered I would have sent a simple wire saying "Deal O. K.," two words and that would have been sufficient. I would not have to specify all of these different conditions. It would have been a very simple matter for me to wire two or three words

Plaintiffs' Exhibit No. 2—(Continued)
(Deposition of John C. Kazanjian.)

saying "Deal is satisfactory," and that would be the way we usually operate when we are confirming something like that.

Q. In this wire you said, "Fifteen cars storage USONE Emperors December 10 conversion satisfactory at 2.50 FOB Exeter guaranty by buyer." Take that much of it.

That conversion has reference to delivery, doesn't it? A. Yes.

Q. What did you mean by conversion?

A. Title was to be converted December 10.

Q. \$2.50 is the sum that Mr. Crane offered to you in the previous wire, is that right?

A. That is right. That was the ceiling price.

Q. The price was FOB Exeter, is that right?

A. Do you mean Mr. Crane's offer? [13]

Q. Yes.

A. No. I didn't say FOB Exeter. Cash in Exeter is what I have always insisted on. In other words, I wanted my check delivered right there to me in my office, not mailed from some unknown buyer or any one else.

Q. The money was to be paid to you before you made delivery, in other words?

A. Before I released the car from my packing house I wanted the money there while I still had physical possession of my grapes.

Q. Is that what you understood by FOB Exeter?

A. Absolutely. I wanted to hold physical possession of my grapes until I had my initial check.

Plaintiffs' Exhibit No. 2—(Continued)

(Deposition of John C. Kazanjian.)

It was strictly a seller's market and we took advantage of it.

Q. If that is what you had in mind, wouldn't you say COD Exeter instead of FOB Exeter?

A. We don't use COD.

Q. FOB is a price determinable at the shipping point, that no shipping charges will be involved, but the price will be determined at Exeter, California?

Mr. Crane: That just means the base price.

Mr. Wackerbarth: Wait a minute. If you want to ask a question you may do so, but don't get this record all balled up.

The Witness: You didn't put it in question form.

Q. (By Mr. Pines): Am I wrong, Mr. Kazanjian? Do you have [14] an understanding different from mine with respect to the meaning of FOB? I understand FOB to mean that the price is determinable at the shipping point. For instance, when a price is quoted on an automobile FOB Detroit it means it will cost more to deliver in Los Angeles, and I am paying the price at Detroit and the buyer will have to pay the shipping expense from Detroit.

Isn't that your understanding of FOB?

Mr. Wackerbarth: There is one element, I think, that you left out, Mr. Pines, and that is freight on board the car; if it is sold FOB the seller has to put it on the car.

Mr. Pines: That is right.

Mr. Wackerbarth: Not only does he have to put

Plaintiffs' Exhibit No. 2—(Continued)
(Deposition of John C. Kazanjian.)

it on the car, but he has to make absolute delivery to the railroad company before title passes.

Mr. Pines: I was trying to get a very common understanding as to FOB. To me it affects the price.

Mr. Wackerbarth: I had a case out here where the stuff burned up before the railroad took it.

Mr. Pines: Anyhow, it still doesn't mean cash in advance. Do you understand my question, Mr. Kazanjian?

The Witness: I understand what you said, yes.

Mr. Pines: You understand FOB to mean anything other than that?

Mr. Crane: FOB means——

Mr. Pines: Just a minute, Mr. Crane. Off the record. [15]

The Witness: FOB taken in relation to the fact that these grapes were not going to be delivered to the buyer immediately, but were to be in storage first—my understanding of FOB was he was supposed to pay me in Exeter and not wait until they went into storage.

Q. (By Mr. Pines): Are you finished, Mr. Kazanjian? A. Yes.

Q. I don't want to interrupt you.

A. Go ahead.

Q. You understood there was to be an immediate payment on inspection at the shipping point, is that right? A. That is right.

Plaintiffs' Exhibit No. 2—(Continued)

(Deposition of John C. Kazanjian.)

Q. That deposit was to assure you of the good faith of the buyer?

A. That was to protect me.

Q. Now, where in these terms or in your wire did you require payment before delivery?

A. It says to be paid immediately on inspection at shipping point.

Q. That is the deposit?

A. What could be clearer than that?

Q. We are referring to the deposit there, aren't we?

A. That is right.

Q. That is the same thing as Mr. Crane offered you, and I refer to the telegram from Mr. Crane to you wherein [16] he says five cars basis \$750 car deposit, ten car basis \$1000 deposit to be paid upon receipt U. S. No. 1 inspection. Isn't that the same thing? This deposit was to be paid upon U. S. No. 1 Government inspection?

A. The difference could be this. The interpretation of his wire would be that if he was not buying this as a principal for himself, but was buying it for some eastern buyer, the eastern buyer could say, "I want that U. S. No. 1 inspection to arrive at my office and then I will mail a check to Red Lion Packing Company for the amount."

I wanted to guard against that. I wanted the buyer to have \$1000 ready and available and transfer it to me in Exeter at the time of packing, immediately on presentation of U. S. No. 1 at Exeter.

Now, two or three weeks can elapse between

Plaintiffs' Exhibit No. 2—(Continued)

(Deposition of John C. Kazanjian.)

that. One is cash in hand while I have physical possession of my grapes, and the other could be three weeks away from some unknown party whose check might bounce before it ever got to me.

Q. I don't want to be argumentative, Mr. Kazanjian, but here is a man who wired you and said he had sold something for your account on the following basis, and if you wish to disavow that authority you wouldn't say that the deal was satisfactory and repeat the terms. You would say "Deal not satisfactory. You have no authority to confirm this sale for me and I will make it only on the following [17] conditions." Is that right?

A. No, because if the deal was satisfactory I would have sent a simple wire saying "Deal satisfactory." I wouldn't mention these other terms.

Q. This was your method of suggesting that Mr. Crane had overstepped his bounds in selling?

A. I was reiterating the conditions that I insisted upon all the way through.

Q. I see.

A. Which were very, very indefinite and very unsatisfactory in his wire. His wire could be interpreted in a number of different ways and I wanted to clear it up and have a concise understanding of what I was insisting on and the deal I wanted to go along on.

Q. You did not take any further steps to relay that on to Mr. Crane until after the ceiling had been lifted, did you?

Plaintiffs' Exhibit No. 2—(Continued)

(Deposition of John C. Kazanjian.)

A. You are entirely wrong in that statement. We discussed this on the telephone the very next morning, several days before the ceiling was taken off.

Q. Mr. Crane testified in your presence that you did not refuse to ship these grapes until after a request had been made from Texas that the shipment dates be accelerated since the ceiling had been lifted and then for the first time you refused to ship them on the grounds that the ceiling had been lifted and you no longer felt obligated to ship [18] the grapes.

Was Mr. Crane wrong in his testimony?

A. That is Mr. Crane's testimony. That is not my testimony.

Q. You would say that he was not telling the truth?

A. I don't have to say that. All I say is this—

Q. Do you deny that is a correct statement?

A. You are interpreting what he said and either your interpretation of his testimony is wrong or his memory might be wrong, on the details of this transaction, and I am not going to say Mr. Crane is wrong.

Q. When did you first inform Mr. Crane that you would refuse to ship these grapes?

A. Mr. Crane telephoned me the following morning.

Q. When you say the following morning, what date are you referring to?

Plaintiffs' Exhibit No. 2—(Continued)
(Deposition of John C. Kazanjian.)

A. The day after October 4, which would be October 5.

Q. Mr. Crane telephoned you?

A. That is right.

Q. Tell us what that conversation was.

A. He wanted a clarification of my wire and I restated the conditions that I was trying to make in this wire.

He said he would send up Mr. Hoover to straighten the matter out and Mr. Hoover came up.

Q. Just a minute. Let's not leave that conversation yet. In that conversation did you tell Mr. Crane to cancel [19] any previous commitment made for the sale of these grapes?

A. Mr. Crane said he would contact the people he was working with and see if he could get the terms that I wanted. He said he felt very——

Q. What terms were discussed then?

A. The same terms that I had insisted on all the time. One was that I wanted my cash payment in Exeter.

Q. You mean cash prior to delivery?

A. No, cash at the time I presented the U. S. No. 1 inspection.

Q. Do you mean prior to inspection rather than after inspection?

A. Not prior to inspection, but immediately after presenting the inspection. I had to have the grapes in the car and the U. S. No. 1 inspection. This wasn't an isolated case. That is the way I

Plaintiffs' Exhibit No. 2—(Continued)

(Deposition of John C. Kazanjian.)

dealt all through 1943 and also all through 1944. It was a seller's market. We insisted on it. That is the way we did business. That was No. 1. Do you want me to go on to the others?

Q. Yes, go on through the entire conversation.

A. I refused to assume any risk in storage. That was the thing we were trying to hash out. That is another thing that is not clear in his wire, whether I am to assume the risk in storage or they.

Another thing, I didn't want to tie up all of my grapes on the strength of fifteen cars in storage. [20]

Q. Did you instruct Mr. Crane to notify his principals that the deal was off?

A. Mr. Crane had never told me who his principals were or who he was dealing with.

Q. Whoever they were, did you tell him there was no deal and he had no authority to confirm the sale in your behalf?

A. That is natural to assume.

Q. Did you or didn't you?

A. Let's follow the sequence of the conversation. That doesn't seem to fit in here. Will you restate that, please?

(Pending question read.)

Mr. Crane never did insist he had a deal. When I talked to him on this deal he was still going to try to get the conditions I insisted on. He said in his mind there was very little question but what he could make the necessary changes, and in the

Plaintiffs' Exhibit No. 2—(Continued)

(Deposition of John C. Kazanjian.)

meantime he was sending Mr. Hoover up to straighten the matter out.

Q. That was on October 5?

A. That was on October 5.

Q. Did Mr. Crane tell you he would communicate with the people in Texas to see whether or not they would revise the terms of that deal in accordance with your wishes?

A. He didn't tell me who he was communicating with.

Q. I didn't ask you whether he told you whom he was [21] communicating with. Did he tell you he would communicate with the people who were buying the grapes?

A. He said he would try——

Q. For the purpose of giving them the terms that you wanted?

A. He said he would try and secure the terms that I wanted.

Q. Do you know whether or not he engaged in any communications with his people thereafter with respect to changing the terms of the deal?

A. I haven't the least idea how he conducted his business or with whom.

Q. Did he tell you he had communicated with those people? A. Which people?

Q. The people who were buying the grapes.

A. No.

Q. Did you have any subsequent conversations

Plaintiffs' Exhibit No. 2—(Continued)

(Deposition of John C. Kazanjian.)

with Mr. Crane with respect to the delivery of these grapes? A. Yes, I think we did.

Q. When were those subsequent conversations?

A. Oh, maybe on the following day. We spoke every day.

Q. You think you had a conversation with him on the 6th of October?

A. I think we did. We spoke every day. [22]

Q. Did you ask him whether he had communicated with the buyers of the grapes to see whether they would change the terms of the deal?

A. I don't think we ever talked about this any more. I think the only other time we talked about this was on the 5th and we took it for granted it was forgotten after the ceiling came off on the 7th or 8th, three or four days later, and the deal was consummated, and the deal was never mentioned and never discussed again except once after this when he said these people were insisting on delivery and wanted to know if we could give them a little preference on some business, and I told him I would leave it to his judgment, if he felt he was under obligation to these people that we would go along and give them some business.

Q. It is your recollection that after October 5 you might have mentioned this matter only about once before a demand was made by the buyers for delivery?

A. I don't know whether it was before or after the demand was made by the purchasers.

Plaintiffs' Exhibit No. 2—(Continued)
(Deposition of John C. Kazanjian.)

Q. Is it your recollection that you had only one conversation with Mr. Crane after that demand was made? A. After the 5th?

Q. Yes.

A. After the demand, did you say?

Q. Yes.

A. I don't know when they made the demand. What was [23] the date?

Q. Do you remember the date when ceiling prices were lifted?

A. I am not certain, but I think it was the 7th or 8th to the best of my recollection because when Mr. Hoover came—the ceiling went off the day before, when he came the ceiling had gone off the day before.

Q. I believe it was October 12 that a request was made of Mr. Crane by the people purchasing the grapes for earlier shipment if possible. Did Mr. Crane communicate with you on that matter at that time? A. I don't remember. I doubt it.

Q. You doubt it?

A. Because it was only mentioned once after that, as I said. He suggested that we give them preference on some business which I said would be satisfactory with me. He said they were a good account.

Q. On October 10 the Southwest Brokerage Company wired to Mr. Crane asking for more speedy delivery. I don't have the date of the wire.

Plaintiffs' Exhibit No. 2—(Continued)

(Deposition of John C. Kazanjian.)

It is apparently a teletype message from Associated to Southwest Brokerage saying, "Red Lion takes the view ceiling lifted any contracts Emperors voided. Willing to go along and give you trade preference shipping as packed at market price which today is 3.25. Advise."

Did you authorize Mr. Crane to quote that market price of \$3.25 to the Southwest Brokerage Company? [24] A. After the ceiling went off?

Q. Yes.

A. Mr. Crane acted as my agent in selling my grapes. That is, I would give him authorization of a car or two cars at a time and he would sell at the best possible price. It was up to him to secure the best price. I would give him one or two cars to work on at a time and he would secure the best price. That was the way we did business the balance of the season after the ceiling came off.

Q. You haven't answered my question, Mr. Kazanjian. My question is whether or not Mr. Crane conferred with you after receiving the request on October 10 for earlier shipments and whether you authorized his reply to the effect you considered the deal voided and that you would ship at \$3.25.

A. I disagree with the statement I said it was voided because the ceilings had come off.

Q. He wasn't quoting you when he made that statement?

A. He wasn't quoting me literally, no.

Q. Directing your attention to the fact there

Plaintiffs' Exhibit No. 2—(Continued)
(Deposition of John C. Kazanjian.)

were a series of telegrams taking place between Mr. Crane and Southwest Brokerage, thereafter, I will ask you whether or not you were consulted by Mr. Crane during those negotiations?

A. I know Ray called up once and said they made a [25] demand on the grapes, but he said, "The hell with them. We have no deal. Let them holler for them all they want to." Those are the very words he used to the best of my recollection.

Q. Did you receive a telegram from the Southwest Brokerage Company demanding delivery of these grapes?

Mr. Hayhurst: Have you a copy of it, Mr. Pines?

Mr. Pines: I believe so.

Mr. Hayhurst: Show it to him. Maybe it will refresh his memory.

Q. (By Mr. Pines): You don't have any independent recollection? A. Not at this time.

Q. Directing your attention to a night letter dated October 13, 1944, Southwest Brokerage Company, Fruit and Vegetable Division, addressed to John Kazanjian, Red Lion Packing Company, Exeter, California, reading as follows:

"Re ten cars Emperors confirmed by you through Associated for West Texas Produce and Central Fruit we wiring Associated tonight offer of FOB plus ten per cent procurement charge unacceptable and buyers want contract fulfilled as confirmed. If not going through on this basis please so advise

Plaintiffs' Exhibit No. 2—(Continued)

(Deposition of John C. Kazanjian.)

immediately by wire as we desire to take action to protect their interests. Personally don't see how lifting ceiling has anything to do with contract made at definite price and Washington has wired us to this [26] effect."

Do you remember receiving that telegram?

A. May I see it?

Q. Yes, sir. This is a photostatic copy (handing document to witness).

A. Well, I really don't recollect it, but undoubtedly I received it. It has been so long ago I don't recall it.

Q. Do you have any recollection whether or not you replied to that telegram?

A. I don't know. I don't remember either one of them, to be honest with you. I think I can say I never replied if I did receive it because those people didn't mean anything to me. I never dealt with them. I don't know what claim they had against me and I didn't pay any attention to them.

Mr. Hayhurst: Is there supposed to be a reply to that, Mr. Pines?

Mr. Pines: There wasn't any that I know of.

Q. I will ask you whether or not for a matter of about a week after October 10 if Mr. Crane did not inform you from day to day that he was receiving telegrams and demands from the Southwest Brokerage Company insisting upon your compliance with this sale?

A. No. Just like I said——

Plaintiffs' Exhibit No. 2—(Continued)
(Deposition of John C. Kazanjian.)

Q. Mr. Crane did not inform you of that?

A. No, sir. I think only one time we talked about it. [27]

Q. Didn't you authorize him to make an offer of compromise sales on this transaction?

A. He asked me if we couldn't give him preference on some cars which I said I would be perfectly willing to do. He said some people had been insisting on delivery on the deal—I don't know what his feeling is now, but at the time he felt he had no deal consummated, but he said they were good customers and he would like to keep them happy. So he asked if we couldn't give him some preference on some cars and I said I didn't see why we couldn't.

Q. Did Mr. Crane inform you that Southwest Brokerage Company had wired him that they had wired Mr. Currie of the War Food Administration and asked whether or not the lifting of the OPA ceiling had any effect on the contract and had received advice from Mr. Currie to the effect that it had no such effect? A. I don't recall.

Q. You did not take this matter very seriously, did you? A. I took it very seriously.

Q. But you had only one conversation with Mr. Crane about it?

A. I took it very seriously, but when there was no contract made it was a dead issue and we went along with our business because we had a lot of business to attend to.

Plaintiffs' Exhibit No. 2—(Continued)

(Deposition of John C. Kazanjian.)

Q. Did Mr. Crane tell you that he had any telephone [28] conversations with the Southwest Brokerage Company on this matter?

A. I don't recall him telling me, no, sir.

Q. Did you have any arrangement with Mr. Crane where you were to share his procurement commission on this transaction?

A. I didn't know he was getting a procurement commission.

Q. It did not make any difference to you what sum of money he might get?

A. It didn't make a particle of difference.

Q. As far as you were concerned, it was strictly a deal for \$2.50 net per lug?

A. As far as I was concerned I wanted certain conditions met. Price was not the only thing.

Q. In so far as price was concerned, you were to receive \$2.50 net per lug?

A. As far as price was concerned I was to receive \$2.50 net per lug. I was operating strictly under the price ceiling. If I wasn't I could have accepted from \$300 to \$500 black market if I was interested.

Q. Did you eventually sell these grapes, these fifteen carloads?

A. I couldn't earmark those fifteen cars, but I sold all of my grapes that year.

Q. What did you get for grapes in December, 1944? [29]

Plaintiffs' Exhibit No. 2—(Continued)
(Deposition of John C. Kazanjian.)

A. I didn't have any in December.

Q. These grapes were disposed of before December of that year?

A. I didn't put any in storage.

Q. These grapes were sold in the latter part of October and November?

A. I think we packed until about, we finished packing about November 10.

Q. What prices did you get for Emperor No. 1 grapes during October and November, 1944?

A. I think we were getting mostly three and a quarter.

Q. What was the highest amount that you sold grapes for during that period of time?

A. I don't know, but I think three and a quarter, and there might have been some sales over that. I don't recall now.

Q. You could determine that from your records, could you not?

A. Yes, sir. There is one point that should be clarified. Sometimes we pack three grades: U. S. 1, U. S. 1 well within, and Unclassified.

Q. I am glad you called my attention to that. I had reference only to Emperor No. 1 as confirmed by Mr. Crane to Southwest Brokerage Company.

Mr. Hayhurst: We will object to the form of the question on the ground it assumes it was confirmed. [30]

Mr. Pines: It is admitted it was confirmed.

Plaintiffs' Exhibit No. 2—(Continued)

(Deposition of John C. Kazanjian.)

Mr. Hayhurst: I disagree with you. I think there is quite an issue.

Mr. Pines: You object to it, but Mr. Crane said he confirmed the deal.

Mr. Hayhurst: I object to the statement that Mr. Kazanjian confirmed the deal.

Mr. Pines: We are talking about these sales.

Q. What were the prices which you got for those particular grapes?

A. What do you mean by particular grapes?

Q. Mr. Crane undertook to confirm in your behalf ten cars of grapes to Southwest Brokerage Company which were described as Emperors No. 1. Now, what price did you get for the sale of those grapes when you sold them?

A. That is what I mean. I had about 115 cars of Emperor grapes that year and I don't know which fifteen cars you could earmark as these fifteen cars.

Q. These were to pass Government inspection U. S. 1. What did you get for Emperor grapes U. S. 1 Government inspection during October and November, 1944?

A. That is why I say there was a range. We pack some of our U. S. 1 which we call U. S. 1 well within. We try to make it better than U. S. 1, but it is still sold as U. S. 1. We occasionally put up a choice pack and get more money. The range was between 3.25 and 3.40. [31]

Q. What did you understand Mr. Crane to be

Plaintiffs' Exhibit No. 2—(Continued)

(Deposition of John C. Kazanjian.)

negotiating about here? Were they choice grapes? I refer to the telegram of October 2, 1944, in which Mr. Crane informed you that he had sold for your account five cars and ten cars of block Emperors No. 1. What grapes did you understand those to have been? Were they your choice quality?

A. U. S. 1 varies with the label. Some people's label of U. S. 1 is considerably better than others. That is why some people get a premium.

Q. Isn't U. S. 1 determined by Government inspection?

A. But the label makes a lot of difference.

Q. What kind of U. S. 1 did you have to offer for sale during that period of time?

A. I think mine was average.

Q. Average. In other words, they would have had to accept any grapes that would pass Government inspection as U. S. 1, is that right?

A. That is right, but on the market there is a range in price even with U. S. 1, depending on the particular label. Some people have spent a lifetime building up a label and they get a little higher price because for years they have constantly packed an excellent pack.

Q. In short summary, I understand it is your position that Mr. Crane was not your agent?

A. I am not a lawyer. I can't tell you whether he was my agent. I am giving you the background and the facts. That [32] is for you to decide.

Q. With respect to these ten carloads of grapes

Plaintiffs' Exhibit No. 2—(Continued)

(Deposition of John C. Kazanjian.)

which he told you he sold for your account, you did not consider him your agent?

A. I am not a lawyer. I don't know whether a man is my agent or not. I am giving you the facts. You decide that.

Q. You are not going to pay him anything for selling them? A. No.

Q. You had no interest in the commission he was going to earn? A. No.

Q. You did not care what he got for them?

A. No.

Q. As long as you got \$2.50 net to you plus whatever other terms you had set up?

A. That is right.

Mr. Pines: That is all.

/s/ JOHN C. KAZANJIAN,
Witness.

Subscribed and sworn to before me this 10th day of July, 1950.

/s/ RALPH MORADIAN,

Notary Public in and for the County of Fresno,
State of California. [33]

State of California,
County of Los Angeles—ss.

I, Byron Oyler, a notary public within and for the County of Los Angeles and the State of California, do hereby certify:

Plaintiffs' Exhibit No. 2—(Continued)

That, prior to being examined, the witness whose signature is affixed to the foregoing deposition, to wit, John C. Kazanjian, was by me sworn to testify the truth, the whole truth, and nothing but the truth;

That, the said deposition was taken down by me in shorthand at the time and place therein named, and was thereafter reduced to typewriting under my direction.

I further certify that I am not interested in the event of the action.

Witness my hand and seal this first day of May, 1950.

[Seal] /s/ BYRON OYLER,
Notary Public in and for the County of Los Angeles,
State of California.

Received in evidence July 11, 1950.

PLAINTIFFS' EXHIBIT No. 3

[Title of District Court and Cause.]

DEPOSITION OF RAYMOND M. CRANE
taken on behalf of Complainants and Appellees, at
Suite 975 Subway Terminal Building, Los Angeles
13, California, on Friday, April 28, 1950, at 2:00
p.m., before Byron Oyler, a notary public within
and for the County of Los Angeles and the State
of California, pursuant to oral stipulation.

Appearances:

For Central Fruit & Vegetable Co., and West
Texas Produce Company, Complainants and
Appellees:

HARRY A. PINES and
J. MANUEL HOPPENSTEIN, by
HARRY A. PINES, ESQ.

For Raymond M. Crane, dba Associated Fruit
Distributors of California, Respondents and
Appellees:

HENRY O. WACKERBARTH, ESQ.

For John C. Kazanjian, dba Red Lion Pack-
ing Company:

RALPH MORADIAN and
AYNESWORTH & HAYHURST,
L. NELSON HAYHURST, ESQ.

Plaintiffs' Exhibit No. 3—(Continued)
(Deposition of Raymond M. Crane.)

Mr. Wackerbarth: It is stipulated that the depositions may be taken at this time and that the witnesses may be cross-examined, and that the depositions are taken subject to reserving objections to questions except as to form. Is that agreeable?

Mr. Pines: So stipulated.

Mr. Hayhurst: In other words, we reserve the right to object to anything except as to the form of the question.

Mr. Wackerbarth: Yes.

Mr. Pines: It is further stipulated that the depositions may be signed before any notary public.

Mr. Wackerbarth: Yes.

RAYMOND M. CRANE

called as a witness on behalf of Complainants and Appellees, having been first duly sworn, deposed and testified as follows:

Direct Examination

By Mr. Pines:

Q. State your full name, please.

A. Raymond M. Crane.

Q. You are the Respondent and one of the Appellees in the case of Centaral Fruit and Vegetable Company and West Texas Produce Company against Raymond M. Crane and John C. [3*] Kazanjian?

* Page numbering appearing at top of page of original Reporter's Transcript of Record.

Plaintiffs' Exhibit No. 3—(Continued)

(Deposition of Raymond M. Crane.)

A. I am the Respondent, the Associated Fruit Distributors of California.

Q. You do business as the Associated Fruit Distributors of California?

A. Yes, I did at that time.

Q. Is that a fictitious firm name?

A. That is right.

Q. All through the year 1944 you were so engaged?

A. That is right.

Q. How long have you known Mr. Kazanjian?

A. Oh, for ten years, approximately.

Q. How long have you done business with Mr. Kazanjian?

A. Eight years.

Q. Your own business is what, Mr. Crane?

A. Produce broker and distributor.

Q. Mr. Kazanjian is engaged in what business?

A. He is a grower, packer and shipper.

Q. Is there any particular commodity that he grows?

A. Grapes is one commodity he grows, and other lines, too.

Q. Does he have a firm name?

A. Yes.

Q. Is that the Red Lion Packing Company?

A. Yes.

Q. When did you first start handling grapes for Red Lion Packing Company? [4]

A. I don't remember exactly.

Q. In September and October, 1944, had you been authorized by the Red Lion Packing Company

Plaintiffs' Exhibit No. 3—(Continued)

(Deposition of Raymond M. Crane.)

to negotiate the sale of any grapes for such concern? A. Specifically, no.

Q. I direct your attention to the date of September 26, 1944, when a series of telegrams were sent by the Associated Fruit Distributors of California to various brokers throughout the United States—I think there were thirteen telegrams—stating that you could book Emperor grapes, and ask you whether or not you sent such a telegram?

A. Yes.

Q. Was that telegram sent at the instance or the request of Red Lion Packing Company?

A. No.

Q. Will you explain the circumstances under which you sent that telegram to these brokers?

A. Our business is a brokerage business and naturally we were anxious to procure business. We knew these grapes were being packed. We knew they were available. We talked to Mr. Kazanjian about them and he indicated that providing we were interested or could interest anybody he would be willing to sell these grapes.

Q. One of those telegrams was sent to a concern called the Southwest Brokerage Company at Dallas, Texas, was it not? [5] A. That is right.

Q. On October 2, 1944, you sent another telegram to Southwest Brokerage Company with respect to some grapes with some revised terms, is that right? A. Yes.

Q. Were those revised terms the subject matter

Plaintiffs' Exhibit No. 3—(Continued)

(Deposition of Raymond M. Crane.)

of any discussion between you and Mr. Kazanjian?

A. Yes.

Q. Will you tell us what discussion you had with Mr. Kazanjian with respect to the terms of the offering?

A. As explained in these telegrams—I could offer those telegrams as the basis of the substance of our conversation as to the terms that he was willing to sell these grapes which we conveyed to the Southwest Brokerage Company.

Q. At the time of the sending of the telegrams under date of September 26, 1944, and October 2, 1944, were you soliciting these brokers to employ you as a procurement agent, as their procurement agent for the sale of these grapes?

A. We were soliciting business, yes, as their procurement agent, broker, which is our normal business.

Q. In the telegram of September 26, 1944, were the words "We charge fifty dollars per car procurement charge."

Was it your intention that that be the fee which was to be paid to you as agent of the buyers in connection with procuring those grapes? [6]

A. Correct.

Q. Do you recall the reply that you received on October 2, 1944, from Southwest Brokerage stating that a deal for ten cars of grapes, six going to Fort Worth and four going to Dallas was O.K. at the

Plaintiffs' Exhibit No. 3—(Continued)
(Deposition of Raymond M. Crane.)

quoted price of \$2.50 net and \$50 to you per car if the same was legal?

A. Well, whatever the telegram would bear out—I would recognize that we received it.

Q. Do you have any recollection of the Southwest Brokerage Company raising the point of whether or not \$50 a car to you was a legal charge?

A. It has been so long ago I can't remember specifically at the moment.

Mr. Wackerbarth: Do you have a copy of it? We have one here, I believe.

Mr. Pines: I would like to have his reply, also.

The Witness: I know we got a wire, but as far as the \$50 I don't just happen to remember specifically.

Mr. Wackerbarth: Here is where it starts. Here is your series of telegrams. You can start glancing through them. This is the Report of the Agriculture Department that he is looking at, Mr. Pines.

Mr. Pines: All right.

Mr. Wackerbarth: Do you find it?

The Witness: I don't seem to see it.

Mr. Pines. I have a copy of your reply in which you [7] say that it is legal, natural, and so on and so forth.

The Witness: I have it here now.

Mr. Pines: Will you read that, please?

The Witness: Referring to——

Mr. Pines: What are you reading from?

Plaintiffs' Exhibit No. 3—(Continued)
(Deposition of Raymond M. Crane.)

The Witness: I am reading from a teletype dated October 2, I think it is.

Mr. Hayhurst: You are actually reading from the photostatic copy of what purports to be a teletype.

The Witness: That is right.

Mr. Pines: Go ahead, Mr. Crane.

The Witness: "Referring that six car Emperors Fort Worth and for Dallas deal O.K. 2.50 net \$50 for you if legal. Presume it is legal or you wouldn't offer it."

Do you want me to read the rest of it?

Q. (By Mr. Pines): Yes, read the rest of the telegram. First, let me ask you, Mr. Crane, this telegram is from whom to whom, or this teletype?

A. This purports to be from the Southwest Brokerage Company to the Associated Fruit Distributors of California.

Q. Is there any other portion that you haven't read?

A. Yes. My answer was: "Haven't been able to contact"——

Q. Just a moment. Was there anything else in the other document? Wasn't something said "Advise G. A."?

A. Yes. It means go ahead. [8]

Q. All right.

A. "Haven't been able to contact the shipper yet but sure it is O.K. Wire you definitely one way or other as soon as get him."

"Yes, it is legal, natural as receiver can pay his

Plaintiffs' Exhibit No. 3—(Continued)

(Deposition of Raymond M. Crane.)

whole markup for buying brokerages if he wants to. Will wire you as soon as receive definite confirmation. I understand it is based on thousand dollar deposit against each USONE inspection as they are loaded." That is all there is pertaining to this deal here.

Q. You were actively interested in the brokerage business in this area in October of 1944, were you not? A. Yes.

Q. Was it a matter of common practice and custom for you to solicit other brokers to use your services as a procurement agent and pay for same during this period of time?

A. It was at that particular period of time, yes.

Q. Had you made any investigation at all to determine whether there was anything illegal about making a procurement charge which when added to the price which the purchaser was paying to the seller might exceed the OPA ceiling?

A. Yes, We talked to our legal counsel about that.

Q. Who was that?

A. I think we talked to the OPA themselves. We talked to Mr. Wackerbarth and talked to Mr. Weickert. I don't [9] remember now, but I know we talked to legal counsel on the matter.

Q. Were there any written rulings furnished you in connection with the propriety of making a procurement charge?

Plaintiffs' Exhibit No. 3—(Continued)

(Deposition of Raymond M. Crane.)

A. I can't recall at the present time. I think we had some at the time on it. It was from the OPA at that time.

Q. Would your records be available at this time for you to search and see whether or not you had any?

A. It has been so long ago now. I have disposed of all the records.

Q. You have disposed of all of those records. You are familiar with the fact that it was common practice for the broker to act for the buyer and pay a brokerage procurement charge?

A. Very common practice. That is the only way the broker could exist because ceilings were set and the buyer was entitled to hire any one he wanted to buy for him if he wanted the merchandise.

Q. Does the file that you have there show the subsequent telegrams?

Mr. Wackerbarth: This can be on or off the record. I have given the witness the file of the Report of the Investigating Committee. Do you have one?

Mr. Pines: I don't have one, but it covers the correspondence. [10]

Mr. Wackerbarth: It covers everything.

Q. (By Mr. Pines): Directing your attention to a night letter sent by you to the Southwest Brokerage on October 2, 1944, which says:

"Secured Redlyon Packing Company confirmation ten cars grapes as outlined you collect deposits

Plaintiffs' Exhibit No. 3—(Continued)

(Deposition of Raymond M. Crane.)

to be forwarded to us soon JUPA"—which I understand means Government inspection—"wire each car." Do you see that message, Mr. Crane? It it referred to here as a night letter so it would be in telegram form.

Mr. Wackerbarth: Here is a copy of it (indicating).

Q. (By Mr. Pines): I will ask you, Mr. Crane, whether or not you had a long distance telephone conversation with Mr. Kazanjian before you sent that wire? A. Yes, sir.

Q. Will you tell us as best you can what was said in that conversation?

A. Mr. Kazanjian confirmed to us, as agents for the buyer, the carloads of grapes in question under the terms and on the basis of the telegrams that we have mentioned here that were sent back and forth and was later confirmed by Mr. Kazanjian's wire to us as of the next day, as I recall.

Q. You talked to Mr. Kazanjian on many occasions by telephone, is that right?

A. Yes. [11]

Q. You recognized his voice in this particular conversation, did you not? A. Sure.

Q. In this conversation did you relate to him the terms that had been agreed upon with Southwest Brokerage Company with respect to the sale of this carload of grapes? A. Yes, sir.

Q. Or I should say ten carloads of grapes, and Mr. Kazanjian at that time told you that it was a deal and you could go ahead and confirm it?

Plaintiffs' Exhibit No. 3—(Continued)

(Deposition of Raymond M. Crane.)

A. That is right.

Q. I refer you to a telegram, Mr. Crane, from you to Mr. Kazanjian, dated October 2, 1944, which starts out as follows:

“Referring telephone have sold for your account basis 2.50 lug net to you block Emperors mentioned * * *”

A. That is right.

Q. That conversation referred to in that telegram is the telephone conversation you have just testified concerning?

A. Yes, sir.

Q. The terms mentioned in this telegram are the terms discussed between you and Mr. Kazanjian in that telephone conversation that preceded the sending of that telegram?

A. Yes, sir.

Q. Did you receive a reply from Mr. [12] Kazanjian?

A. Yes, sir.

Q. Do you have that before you?

A. Yes, sir.

Q. That is the telegram that reads as follows:

“Fifteen cars storage USONE Emperors December tenth conversion satisfactory at two dollars and fifty cents FOB Exeter guaranty by buyer one thousand dollars deposit on ten cars and seven hundred fifty dollars on five cars said deposit to be paid immediately on inspection at shipping point you to arrange for storage as agreed balance of pack intend to load after October twentieth will be glad to make deal on same about fifteenth of October.”

Is that the telegram you received from Mr. Kazanjian?

A. Yes, sir.

Plaintiffs' Exhibit No. 3—(Continued)

(Deposition of Raymond M. Crane.)

Q. Was there anything in that telegram that indicated to you that Mr. Kazanjian was quoting terms different from or other than those terms which he had authorized you to confirm to the Southwest Brokerage Company?

A. They are the same terms that we offered to the Southwest Brokerage Company.

Q. Shortly thereafter the Southwest Brokerage Company sent you a standard memorandum of sale on this transaction, is that right?

A. Yes, sir.

Q. Do you have that in front of you? [13]

A. Yes, sir.

Q. Do you recall receiving the standard memorandum of sale?

A. I don't recall specifically receiving it, but here is a photostatic copy of it or what purports to be a photostatic copy of it.

Q. What did you do with that standard memorandum of sale when you received it?

A. I think we probably filed it.

Q. Was there anything in that Memorandum of Sale containing the terms different from or other than those terms of sale which had been confirmed in the telegraphic correspondence that we have mentioned previously?

A. In substance, the confirmation is the same. There are a few small differences, but in substance I would say the confirmation is the same.

Q. Was there anything about the Standard

Plaintiffs' Exhibit No. 3—(Continued)

(Deposition of Raymond M. Crane.)

Memorandum of sale that would cause you or that did cause you to cause any correction to be made in it?

A. Well, I don't recall specifically right at the moment without checking back on those telegrams.

Q. Did you communicate with the Southwest Brokerage Company in any manner or form for any correction as to the Standard Memorandum of Sale?

A. I don't specifically recall right offhand at the moment. [14]

Q. On or about October 11, I believe it was, did you receive a communication from the Southwest Brokerage Company advising you that the buyers of the grapes, in view of the fact that the OPA price ceiling had been lifted, would like to have delivery prior to December 10, at least as to some of the grapes?

A. Yes, I remember receiving a wire like that.

Q. Do you have that in front of you, Mr. Crane?

A. Yes.

Q. Will you please turn to your reply to that?

A. It isn't here.

Q. Then I will read it to you:

"Shipper Red Lion takes view account ceiling lifted any contracts Emperor is voided. Willing go along give you trade preference shipping as packed at market price which today 3.25. Advise. Associated Fruit Distributors of California."

A. Yes, I remember that.

Plaintiffs' Exhibit No. 3—(Continued)

(Deposition of Raymond M. Crane.)

Q. When you received the request from the Southwest Brokerage Company for an accelerated shipping on these grapes, did you then communicate with Mr. Kazanjian? A. Yes, sir.

Q. How did you do that? A. By phone.

Q. By telephone? A. Yes. [15]

Q. Will you tell us as best you can what was said in that conversation?

A. His view in relation to that was the fact that this ceiling was changed more or less in the middle of the transaction, before the grapes were picked and put into storage, that the ceiling had gone off and the people hadn't put up their deposits and he felt due to that fact there wasn't any contract and he wasn't going to deliver.

Q. Did Mr. Kazanjian assign any other reason for his refusal to ship the grapes?

A. It was mainly the fact that they hadn't sent any money, that there had not been any transaction completed because of the change in the ceiling price, or the abandonment of the ceiling.

Q. They were not in default with respect to the payment of any money, were they?

A. I wouldn't say exactly, but I would say there was no definite meeting of the minds in the whole transaction. The ceiling changed before it was consummated because it was not consummated in my opinion until such time as money changed hands.

Q. When you speak of a meeting of the minds,

Plaintiffs' Exhibit No. 3—(Continued)

(Deposition of Raymond M. Crane.)

Mr. Crane, there was a meeting of the minds with respect to the terms of this transaction, wasn't there?

A. I would say yes, but the ceiling changed before the contract had a chance to be [16] completed.

Q. The money to be paid was to be paid upon U. S. Government inspection, is that right?

A. That is right.

Q. Had that inspection taken place?

A. No.

Q. So that the buyers were not obligated to send any money until that inspection took place, were they?

A. Well, I wouldn't say they were, no, not until inspection took place.

Q. So when you say there was a failure to have a meeting of the minds you mean that you or Mr. Kazanjian were under the impression that you were dealing only with respect to a situation in which there was a price ceiling and the price ceiling having been lifted you no longer saw the desirability of the deal from your point of view?

A. That is right—well, that wouldn't be of benefit as far as that is concerned, but I tried and did get Mr. Kazanjian to endeavor to deliver, but he wouldn't by reason of the fact the ceiling went off.

Q. Did Mr. Kazanjian, prior to your sending

Plaintiffs' Exhibit No. 3—(Continued)

(Deposition of Raymond M. Crane.)

this last telegram, advise you that he was not going to ship these grapes?

A. I don't understand your question. (Question read.) I don't remember.

Q. Had he given you instructions to try to cancel the deal earlier you would have communicated that information [17] to the Southwest Brokerage Company, would you not?

A. Oh, sure, absolutely, because we were anxious to make the deal ourselves. After all, we had the brokerage in it and that is the only opportunity we had for getting anything out of it.

Q. You don't have any interest in the Red Lion Packing Company, Mr. Crane?

A. No, sir.

Q. And Mr. Kazanjian has no interest in the Associated Fruit Distributors of California?

A. No, sir.

Q. Was there any deal between you whereby he was to participate in the brokerage commission that you were to earn in this transaction?

A. No, sir.

Q. Did you ultimately sell these grapes for Mr. Kazanjian?

A. I don't think we did. I think we had sort of a disagreement. I don't recall that we sold these grapes at all.

Q. You have done business for him since, have you not?

Plaintiffs' Exhibit No. 3—(Continued)

(Deposition of Raymond M. Crane.)

A. Yes, in rare instances—not so much, though—an odd car.

Q. Did you discuss your brokerage commission, the \$50 per car, with Mr. Kazanjian?

A. No, sir. [18]

Q. Did you tell him what you were charging per car? A. No, sir.

Q. He didn't ask you what you were charging as brokerage commission?

A. No. We don't necessarily do that, especially if we are acting as an agent for the buyer.

Q. Mr. Kazanjian definitely understood you to be the agent for the buyer and not for himself?

A. That is right.

Q. As agent for the buyer, did you consider the telegram sent to you by Mr. Kazanjian, saying that the deal which you made was satisfactory, a sufficient memorandum of the contract to bind the deal?

A. Under normal circumstances I would consider it sufficient.

Q. What about these circumstances?

A. In these circumstances where the ceiling was involved, where Government inspection was a part of the terms of the contract, where the dates of shipment—I would say that it would depend upon the ability to fulfill the contract on the part of the shipper or packer and it would depend a great deal on subsequent conditions and happenings as may evolve.

Plaintiffs' Exhibit No. 3—(Continued)
(Deposition of Raymond M. Crane.)

Q. I don't think you understand my question, Mr. Crane. You make these deals every day in the course of your business in selling or buying for particular principals. [19]

You had received an offer from the Southwest Brokerage Company for two concerns, one of which was in Dallas and one of which was in Fort Worth?

A. I wouldn't say we received an offer. I would say we received an order to buy.

Q. That is right. A. For a principal.

Q. You related that offer to Mr. Kazanjian over the telephone? A. That is correct.

Q. In your conversation with him you disclosed all of the terms of that offer? A. Yes, sir.

Q. In this conversation he told you those terms were satisfactory and to go ahead with the sale?

A. Yes, sir.

Q. You then corroborated that by your telegram to Mr. Kazanjian, referring to the telephone call?

A. Correct.

Q. And in turn he sent you a wire telling you that the deal was satisfactory? A. Correct.

Q. Now, my question to you, Mr. Crane, is: Did you consider any other documentary evidence necessary before there would be a closed deal?

A. Only the Government inspection, that the merchandise [20] was U. S. No. 1 Grade.

Q. That is only with respect to the delivery of the grapes and the payment for them?

A. That is what I meant by my prior statement.

Plaintiffs' Exhibit No. 3—(Continued)

(Deposition of Raymond M. Crane.)

Q. You say you did urge Mr. Kazanjian to fulfill his agreement to ship these grapes?

A. Yes, sir.

Q. At that time he was contending that because of the OPA ceiling being lifted he did not feel obligated to deliver them?

A. Yes, sir.

Q. Did you tell him you felt that that was not a meritorious defense or meritorious reason not to deliver these grapes?

A. Well, I used all of the arguments I could think of, that I knew of at the time with relation to it.

Q. He nevertheless refused to ship them?

A. That is right.

(At this point the deposition of Mr. John C. Kazanjian took place, after which Mr. Pines asked the following questions of Mr. Crane:)

Q. Mr. Crane, you heard Mr. Kazanjian's testimony this afternoon?

A. Yes, sir.

Q. You may recall that in his testimony he stated on October 2, 1944, in a telephone conversation between the two [21] of you, that he had not authorized you to confirm the sale to the Southwest Brokerage Company. Is that true or isn't it true?

A. Specifically the way you put it, I would say that that was untrue.

Q. He did authorize you to confirm it?

A. No, but the way you put it is not true.

Q. What is true?

Plaintiffs' Exhibit No. 3—(Continued)
(Deposition of Raymond M. Crane.)

A. He said that he would be agreeable and that I could be assured of these grapes under the specific terms that we outlined to Texas.

Q. You told him you sold these grapes, didn't you?

A. I told him I sold the grapes, but I didn't say who I sold to.

Q. But you told him you sold the grapes?

A. Yes.

Q. And you told him the basis on which you sold them?

A. That is right.

Q. He said that was satisfactory?

A. That is right.

Q. Then you sent your wire confirming the fact you had sold the grapes?

A. That is right.

Mr. Pines: That is all. Do you have any questions?

Mr. Wackerbarth: No questions. [22]

Mr. Hayhurst: No questions.

.....,

Witness.

Subscribed and sworn to before me this day
of, 1950.

.....,

Notary Public in and for the County of Los Angeles,
State of California. [23]

Plaintiffs' Exhibit No. 3—(Continued)

State of California,
County of Los Angeles—ss.

I, Byron Oyler, a notary public within and for the County of Los Angeles and the State of California, do hereby certify:

That, prior to being examined, the witness whose signature is affixed to the foregoing deposition, to wit, Raymond M. Crane, was by me sworn to testify the truth, the whole truth, and nothing but the truth;

That, the said deposition was taken down by me in shorthand at the time and place therein named, and was thereafter reduced to typewriting under my direction.

I further certify that I am not interested in the event of the action.

Witness my hand and seal this twenty-ninth day of April, 1950.

.....,
Notary Public in and for the County of Los Angeles,
State of California.

Received in evidence July 11, 1950. [24]

PLAINTIFFS' EXHIBIT No. 4
(Designated Portions)

[Title of District Court and Cause.]

DIRECT INTERROGATORIES TO BE PRO-
POUNDED TO THE WITNESS, JOE
MOESMAN

Interrogatory Number One

Q. Please state your name, address and occupation.

A. Joe Mosesman, 2009 Cadiz Street, Dallas, Texas—wholesale produce dealer.

Interrogatory Number Two

Q. Please state whether or not you are a licensed produce dealer from the United States Department of Agriculture.

A. Yes, I am.

Interrogatory Number Three

Q. Please state how many years' experience you have had in the fresh fruit and vegetable business and in what capacity.

A. Over forty years. Operator of wholesale produce business.

Interrogatory Number Four

Q. Directing your attention to on or about October 3, 1944, state what business you were engaged in and in what capacity.

A. Wholesale produce dealer, handling fresh fruit and vegetables in the capacity of partner and general manager of Central Fruit and Vegetable Company. In 1944, Central Fruit and Vegetable

Plaintiffs' Exhibit No. 4—(Continued)

Company was a partnership composed of myself, Morris Lipshitz and Sylvia Schwartz. I am now sole owner.

Interrogatory Number Five

Q. Directing your attention to on or about October 3, 1944, state if you know who and what Central Fruit and Vegetable Company was and the type business it was engaged in.

A. Central Fruit and Vegetable Company, as stated in the other question, was a partnership composed of myself, Morris Lipshitz and Sylvia Schwartz, and was engaged in the business of operating a fresh fruit and vegetable business at wholesale. I am now sole owner.

Interrogatory Number Six

Q. Directing your attention to on or about October 3, 1944, state whether or not the standard memorandum of sales agreement of the Southwest Brokerage Company attached to Complainant's complaint is a true copy of the memorandum of sale entered into by you.

A. Yes, it is a true copy.

Interrogatory Number Seven

Q. State whether or not the standard memorandum of sale agreement of the Southwest Brokerage Company, dated October 3, 1944, attached to Complainant's report, correctly reflects your understanding of the purchase of the grapes involved in the transaction.

Plaintiffs' Exhibit No. 4—(Continued)

A. Yes, it correctly reflects my understanding of the purchase of the grapes involved and is the memorandum of sale agreement presented to me by Southwest Brokerage Company and we agreed to the purchase on the terms set forth in the memorandum.

Interrogatory Number Ten

Q. State whether or not you were ready, willing and able on and after October 3, 1944, to accept and pay for the grapes described in the standard memorandum of sale agreement above mentioned and had the cash with which to pay for said merchandise.

A. Yes, I was ready, willing and able to accept and pay for the grapes and had the cash with which to pay for the merchandise and comply with the agreement.

Interrogatory Number Eleven

Q. State if you know whether or not West Texas Produce Company was financially able on and after October 3, 1944, to perform its financial obligation under the aforementioned standard memorandum of sale agreement.

A. I do know from personal knowledge of business and financial statements that West Texas Produce Company was financially able on and after October 3, 1944, to perform its financial obligation under the memorandum sale agreement involved in our suit against Associated Fruit Distributors and Red Lion.

Plaintiffs' Exhibit No. 4—(Continued)

Interrogatory Number Fourteen

Q. When did you learn that neither Red Lion Packing Company or Associated Fruit Distributors of California was not going to deliver you the grapes ordered?

A. Sometime in October, about October 10, 1944, or October 11, 1944.

Interrogatory Number Fifteen

Q. State whether or not you made any effort to obtain the purchase of ten other cars of grapes.

A. Yes, I did. I instructed and gave orders to several brokers in Dallas to attempt to obtain other grapes. Brokers were J. Margules of Southwest Brokerage Company, Bill Taylor, Roy Wright and Vance Smith. These instructions to purchase were given in October, November and December, 1944.

Interrogatory Number Sixteen

Q. Please state what efforts you made to obtain the purchase of additional cars.

A. Grapes were scarce and the demand was great and I made repeated calls on the brokers to attempt to get confirmation for the purchase of grapes.

Interrogatory Number Seventeen

Q. State whether or not you made every effort to procure the purchase of replacement cars of grapes.

A. Yes, I tried very hard and did everything I could to attempt to procure the purchase of replacement cars of grapes.

Plaintiffs' Exhibit No. 4—(Continued)

Interrogatory Number Eighteen

Q. How many cars were you able to purchase in replacement of these cars of grapes?

A. I was able to purchase the following: October 24, 1944, one car, 1,125 lugs, from Heggblade-Margules Co.; and $\frac{1}{2}$ car from Western Fruit Growers, 1,105 lugs, January 15, 1945; $\frac{1}{2}$ car Emperor grapes from Texas Produce Company, Dallas, Texas, November 15, 1944; $\frac{1}{2}$ car Emperor grapes from Heggblade-Margules Co., billed by Southwest Brokerage Company, November 20, 1944. Only the October 24, 1944, purchase from Heggblade was U. S. Number 1 Emperors; all the rest were unclassified grapes.

Interrogatory Number Nineteen

Q. What prices did you pay for the grapes that you were able to replace?

A. Paid \$3,865.00 for the car from Heggblade-Margules Co., and \$4.15 f.o.b. for the grapes from Western Fruit Growers. \$3.25 per lug, exclusive of freight and pre-cooling for the $\frac{1}{2}$ car from Texas Produce Company; \$3.50 per lug, f.o.b.—\$4.023 per lug delivered for the $\frac{1}{2}$ car, 585 lugs from Heggblade-Margules Co., billed by Southwest Brokerage Company.

Interrogatory Number Twenty

Q. Based on your experience in the produce business, state if you know what the prevailing market price for U. S. Number 1 grapes was on or

Plaintiffs' Exhibit No. 4—(Continued)

about December 10, 1944, and the period subsequent thereto and prior thereto after October 3, 1944.

A. Yes, I know what the prevailing market price for U. S. Number 1 grapes and U. S. Number 1 Emperor grapes was during the period asked in the question at Dallas, Texas, and in California. The prevailing market price quoted was between \$4.00 and \$4.50 per lug, but it was difficult to obtain confirmation even at those prices as the prices kept going up and the demand was great. The price of \$4.00 to \$4.50 per lug was the market price on December 10, 1944, in California and likewise at Exeter, California.

Interrogatory Number Twenty-two

Q. State whether or not you were able to actually buy ten cars of grapes even at the prices quoted on U. S. Number 1 Emperors.

A. I was not able to actually buy ten cars of grapes even at the prices quoted on U. S. Number 1 Emperors.

Interrogatory Number Twenty-four

Q. State whether or not you were able to get any confirmation of sales from any shippers for the Number 1 grapes.

A. I was only able to get confirmation and purchase the grapes that I actually purchased as I testified to before, as answered to question eighteen.

Interrogatory Number Twenty-five

Q. What are the facts as to who first contacted

Plaintiffs' Exhibit No. 4—(Continued)

you with reference to the purchase of U. S. Number 1 Emperor grapes involved in this law suit?

A. Jay Margules of Southwest Brokerage Company contacted me with a wire from Associated Fruit Distributors.

Interrogatory Number Twenty-six

Q. Did you solicit originally Associated Fruit Distributors of California to procure grapes for you? A. I did not.

Interrogatory Number Twenty-seven

Q. What brokers did you contact to attempt to procure replacement cars of grapes when the ten cars were not delivered by the defendants in this suit?

A. Jay Margules, Southwest Brokerage Company, Bill Taylor, Roy Wright and Vance Smith.

Interrogatory Number Thirty-three

Q. Had the ten cars of grapes been delivered, of which you were to receive four, please state whether or not there was a ready market for the resale of the grapes in your trade territory.

A. Yes, the demand was great.

Interrogatory Number Thirty-four

Q. If you have answered the foregoing interrogative in the affirmative, that there was, please state what the prevailing market resale price was in Dallas, Dallas County, Texas, and Fort Worth, Tarrant County, Texas, and the adjoining trade territory.

Plaintiffs' Exhibit No. 4—(Continued)

A. On December 10, 1944, the prevailing market price for Emperor grapes in California and at Dallas, Texas, was between \$4.00 and \$4.50 per lug, and the prevailing resale price in Dallas and Fort Worth, Texas, was from \$5.00 to \$5.50 per lug.

[Interrogatories]:

Respectfully submitted,

/s/ J. MANUEL HOPPENSTEIN,

/s/ HARRY PINES,

Attorneys for Complainant.

[Answers]:

/s/ JOE MOSESMAN,

Witness.

Subscribed and sworn to before me, by Joe Mosesman, on this 29th day of November, 1949.

[Seal] /s/ OLLIE S. REILLY,

Notary Public,

Dallas County, Texas.

[Certified.]

Plaintiffs' Exhibit No. 4—(Continued)

[Title of District Court and Cause.]

CROSS-INTERROGATORIES PROPOSED BY
RAYMOND M. CRANE TO BE PRO-
POUNDED TO THE WITNESS JOE
MOESMAN

Cross-Interrogatory Number One

Q. If your answer to direct interrogatory number eleven is in the affirmative, will you then attach to the deposition a written statement of assets and liabilities of the West Texas Produce Company as of October 3, 1944, and as of December 10, 1944.

A. I do not have a copy of the written statement of the assets and liabilities, but I will try to get one and attach to the deposition as close to those dates as possible.

(Reporter's Note: The sheets attached hereto, marked Exhibit "A," were supplied by the witness to be attached to his deposition, same being furnished after the taking of his deposition, but before transcript of his answers was completed.)

Cross-Interrogatory Number Two

Q. If your answer to direct interrogatory number thirteen is in the affirmative, will you then produce and attach to the deposition a bank statement or ledger sheet furnished you by the bank, showing amount of money on deposit in said bank in your account, also furnish a written statement of assets

Plaintiffs' Exhibit No. 4—(Continued)
and liabilities as of October 3, 1944, and December 10, 1944.

A. I will get these statements as close to those dates as possible and attach them and deliver them to the person taking my deposition. There was no substantial change in the financial statements during these months.

Cross-Interrogatory Number Three

Q. If your answer to direct interrogatory number eighteen is to the effect that you were able to purchase cars of grapes in replacement of the cars which were not sent to you by the respondents in this action, will you produce and attach to your deposition the original or photostatic copies of the invoices received on said cars.

A. Yes, I will try to do so and deliver them to the person taking the deposition to be attached, if I can locate them. I believe the originals were introduced at the hearing in Los Angeles.

Cross-Interrogatory Number Four

Q. In connection with the purchase by Central Fruit and Vegetable Company of four cars of grapes, did you, on behalf of Central Fruit and Vegetable Company, agree to, or were you to, pay Raymond M. Crane, or the Associated Fruit Distributors of California, the sum of \$1000.00 per car, to be transmitted by said Crane or Associated Fruit Distributors to Red Lion Packing Company or John C. Kazanjian, as a part payment on the purchase price of each of said cars?

A. It was my understanding and agreement that

Plaintiffs' Exhibit No. 4—(Continued)

a deposit of One Thousand Dollars per car grapes be paid to Associated Fruit Distributors and Red Lion Packing Company, or John C. Kazanjian, upon furnishing of government inspection reports.

Cross-Interrogatory Number Five

Q. If your answer to the foregoing cross-interrogatory is in the negative, then state whether or not in the testimony which you gave on February 19, 1946, before Raymond L. Dillman, Examiner appointed in the above-entitled proceeding, you stated or testified in substance that you agreed to pay said Crane or Associated Fruit Distributors \$1000.00 for each car of grapes and that they were to transmit same to Red Lion or Kazanjian.

A. I do not remember, but it is likely that I so stated. I do not deny, I may have so testified.

Cross-Interrogatory Number Six

Q. In connection with the purchase by Central Fruit and Vegetable Company of four cars of grapes, did you regard or consider Crane or Associated Fruit Distributors as acting for you?

A. I will have to explain my answer to this question. I consider Crane or Associated Fruit Distributors as a seller and that he was also acting for the shipper, Red Lion or Mr. Kazanjian, and that I was to pay Crane or Associated Fruit Distributors Fifty Dollars a car for consummating the purchase as he was making grapes available to us. I consider him as acting in a dual capacity, as a seller and as a procurer for me.

Plaintiffs' Exhibit No. 4—(Continued)

Cross-Interrogatory Number Seven

Q. If your answer to the foregoing cross-interrogatory is in the negative, then state whether or not in the testimony which you gave on February 19, 1946, before Raymond L. Dillman, Examiner appointed in the above-entitled proceeding, you stated or testified in substance that you regarded Crane as acting for you.

A. I do not remember, but it is likely that I so stated, but I do remember that I wanted to explain and did explain my answer to the examiner, Mr. Dillman. I am not a lawyer and have seldom been in court and merely want to state what the facts actually are. I expected Mr. Crane or Associated Fruit Distributors to see to it that the grapes purchased and which Crane confirmed being sold would be delivered.

Cross-Interrogatory Number Eight

Q. In connection with the purchase by Central Fruit and Vegetable Company of four cars of grapes, did you agree to, or were you going to, pay Crane or Associated Fruit Distributors \$50.00 a car for procuring or buying said four cars of grapes for your account?

A. I cannot answer the question as framed or put by you as it is assuming certain facts and conclusions. The memorandum sales agreement speaks for itself. I did agree that Fifty Dollars a car would be paid to Crane or Associated Fruit Distributors.

Plaintiffs' Exhibit No. 4—(Continued)

Cross-Interrogatory Number Nine

Q. If you answered the foregoing cross-interrogatory in the negative, then state whether or not in the testimony which you gave on February 19, 1946, before Raymond L. Dillman, Examiner appointed in the above-entitled proceeding, you stated or testified in substance that you agreed to or were going to pay said Crane or Associated Fruit Distributors \$50.00 a car for procuring or buying four cars of grapes for your account.

A. I do not remember exactly my testimony, but I do recall explaining my answer and understanding of the questions asked me at the time to the examiner, Mr. Dillman, and it is likely that I so testified as to the payment of Fifty Dollars a car. I do not admit nor deny the testimony as recorded given before the examiner.

Cross-Interrogatory Number Ten

Q. In connection with the purchase by Central Fruit and Vegetable Company of four cars of grapes, did you consider Crane or Associated Fruit Distributors your agent to get the grapes for you?

A. I cannot answer your question as I do not know what you mean by "agent" as I am not a lawyer. Crane or Associated Fruit Distributors were not on my payroll and were not my employees. They offered the grapes for sale and wired that confirmation was obtained. I agreed that Crane or Associated Fruit Distributors would receive Fifty Dollars per car. I am not legally qualified to state

Plaintiffs' Exhibit No. 4—(Continued)

what legal relationship based on these facts amounted to in law.

Cross-Interrogatory Number Eleven

Q. If you answered the foregoing cross-interrogatory in the negative, then state whether or not in the testimony which you gave on February 19, 1946, before Raymond L. Dillman, Examiner appointed in the above-entitled proceeding, you stated or testified in substance that you considered Crane your agent to get these grapes for you.

A. I do not recall all the testimony given the examiner. It is likely that I so testified, explaining my answer to the examiner based on my understanding of questions asked me, and I do not deny whatever is found in the Statement of Facts.

[Answers]:

/s/ JOE MOSESMAN,

Witness.

Subscribed and sworn to, before me, by Joe Mosesman, on this, the 29th day of November, 1949.

[Seal] /s/ OLLIE S. REILLY,

Notary Public, Dallas County,
Texas, Reporter.

[Cross-Interrogatories]:

.....,

Attorney for Raymond M.
Crane, dba Associated Fruit
Distributors.

Plaintiffs' Exhibit No. 4—(Continued)

The State of Texas,
County of Dallas—ss.

I, Ollie S. Reilly, a Notary Public in and for Dallas County, Texas, do hereby certify that the foregoing answers of Joe Mosesman, the witness before named, were signed and sworn to by the said witness before me.

Given under my hand and seal of office, this the 29th day of November, 1949.

[Seal] /s/ OLLIE S. REILLY,
Notary Public, Dallas County,
Texas.

Received in evidence July 11, 1950.

PLAINTIFFS' EXHIBIT No. 5

Before the Secretary of Agriculture
PACA Docket No. 4589

In re:

CENTRAL FRUIT & VEGETABLE COMPANY
AND WEST TEXAS PRODUCE COMPANY

vs.

ASSOCIATED FRUIT DISTRIBUTORS OF
CALIFORNIA and RED LION PACKING
COMPANY.

Wednesday, February 19, 1947

PROCEEDINGS

Examiner Griffin: There is set for hearing at this time and place the matter of Central Fruit & Vegetable Company and West Texas Produce Company versus Associated Fruit Distributors of California and Red Lion Packing Company. [2*]

* * *

Mr. Hoppenstein: I would like to call Mr. John Kazanjian.

For the purpose of the record, we would like to show that we are calling one of the respondents, Mr. Kazanjian, as an adverse witness, and are not to be bound by his testimony. [4]

JOHN C. KAZANJIAN,

a witness called on behalf of the complainants, having been first duly sworn, was examined and testified as follows:

* Page numbering appearing at top of page of original Reporter's Transcript of Record.

Plaintiffs' Exhibit No. 5—(Continued)
(Testimony of John C. Kazanjian.)

Direct Examination

By Mr. Hoppenstein:

Q. State your name, please.

A. John C. Kazanjian.

* * *

Q. Do you hold a license from the Department of Agriculture? A. Yes.

Q. Do you recall around October—a little prior thereto, having 15 cars of U. S. No. 1 grapes available for sale in interstate commerce?

A. Yes. [5]

* * *

Q. (By Mr. Hoppenstein): As I understand it, you had 15 cars of U. S. No. 1 [6] Emperor grapes that you were offering for sale, is that correct?

A. I had a lot more than 15 cars.

Q. Directing your attention to a particular group of 15 cars, when did you first contact Mr. Crane concerning those cars?

A. Oh, I think we talked that over with Crane—my guess would be about three or four weeks previous to October 3rd.

Q. And at that time what was your conversation with Mr. Crane?

A. He asked me if I was going to put any grapes in storage. Storage was at a premium at that time. Storage space was hard to find, and he told me he had storage available, if I was interested in putting some in storage, and I told

Plaintiffs' Exhibit No. 5—(Continued)

(Testimony of John C. Kazanjian.)

him to let me know if he could work out a storage deal. [7]

* * *

Q. What did you tell Mr. Crane, and what did he tell you, concerning those cars of grapes being placed in storage?

A. Exactly what I said. He asked me if I was going to put any in storage, if I would be interested in a storage deal, and he said he thought he could get some storage space, and I told him to let me know if he could, and see what we could work out.

Q. Did you quote any price to him?

A. The price was already set by the ceiling.

Q. Sir?

A. The ceiling, I said, already set the price. It wasn't a matter of price. There was a ceiling set on it. We had a ceiling to operate under, and the ceiling was always the price.

Q. Did you have any discussion or conversation with him concerning the transferring of title to 15 cars of U. S. No. 1 grapes about December, 1944, at a fixed price of \$2.50 per lug to you?

A. At that time I don't think we ever went into that [8] much detail. It was just like I said: He asked me if I was going to go into storage, or was interested in a storage deal, and I said, yes, and he was going to let me know if he could find the storage, and then, later on, we had several telephone conversations, in which he told me that he

Plaintiffs' Exhibit No. 5—(Continued)

(Testimony of John C. Kazanjian.)

had located storage, and that he had the buyers that would be willing to guarantee the price and assume the risk of storage, and pay for the grapes. Of course, it was different from this wire which I got eventually; the terms and the amounts were different. But, we had several telephone conversations. Mr. Crane called me up about every day, and then his representative, Mr. Hoover, used to come up there and call on me quite regularly.

Q. You knew that Mr. Crane, doing business as Associated Fruit Distributors of California, was offering these grapes for sale in interstate commerce, did you not?

* * *

The Witness: I never know what Crane is doing,—that is his business—no more than he knows what I am doing over there at my end of the deal.

Q. (By Mr. Hoppenstein): Was it agreeable to you for Mr. Crane to proceed to [9] offer the 15 cars of U. S. No. 1 grapes for sale?

A. I couldn't stop Crane from doing anything. But, I mean, I didn't agree to anything. Crane could have gone ahead and agreed to give those grapes away. He had no authorization, either in verbal or writing, from me, to make any definite offer. He was supposed to come to me with a proposition, and see if it was agreeable to me. I mean, I haven't given him any authority to go ahead and quote it, under any conditions.

* * *

Plaintiffs' Exhibit No. 5—(Continued)

(Testimony of John C. Kazanjian.)

Q. You knew that they were being offered on the basis of \$1,000.00 per car deposit by buyers, with the buyers making a \$50.00 charge for storage, did you not?

A. I didn't know what Crane was—Crane was to make the deal, and then come to me and find out if the deal was satisfactory to me. I hadn't told Crane what kind of a deal to offer. Crane was supposed to work out a deal, and come to me and find out if I would want the deal. So, I don't know what he was offering until—this is the first information I have from him what he has been able to work out (indicating).

Q. Did Crane ever advise you that he had made a deal of 10 cars of U. S. No. 1 grapes at a price of \$2.50 per lug [10] net to you, to Central Fruit & Vegetable Company of Dallas and West Texas Produce Company?

* * *

The Witness: No, he did not.

Q. (By Mr. Hoppenstein): He never had a telephone conversation with you, advising of any such sale?

A. Never mentioned any parties.

Q. Did he tell you that he had any sale, without mentioning the names of parties?

A. This wire here was the first reference to it.

Q. Was it the only time?

A. That I remember.

Plaintiffs' Exhibit No. 5—(Continued)
(Testimony of John C. Kazanjian.)

Q. Did he have any telephone conversation with you prior [11] to your receiving that wire?

A. He had, I imagine, to the effect that he was trying to work out a storage deal, and he thought it would be satisfactory.

Q. And he never advised you by telephone that he had confirmed 10 cars of grapes to Central Fruit & Vegetable and West Texas Produce Company?

A. In all our dealings, he never tells me who he is dealing with. I never know who he sells to. I get my checks through him.

Q. State whether or not on October 3, 1944, you received a telegram from Associated Fruit Distributors of California, addressed to you at Exeter, California, as follows:

“Referring Telephone Have Sold for Your Account Basis 2.50 Lug Net to You Block Emperors Mentioned Five Cars Basis 750.00 Car Deposit Ten Cars Basis 1,000.00 Deposit to Be Paid Upon Receipt US One Government Inspections Now Depending You Handle Through Us Balance Cars You Mentioned for Fresh Shipment Advise When Expect Ship These Believe We Could Place Them Now Ceiling Priedxxx Price with Deposits Selling Basis Ability Makes US One Grade Suggest Give Us Approximate Shipping Dates Mays Well Get Cleaned Up Since Ceiling Precludes Any Possibility Higher Market Time of Shipment Will Forward Confirmations for Your Signature Soons Receive Airmail From Buyers.” [12]

Plaintiffs' Exhibit No. 5—(Continued)

(Testimony of John C. Kazanjian.)

Signed, "Associated Fruit Distributors of California."

Did you receive such a wire? A. Yes, I did.

Q. Then I will ask you whether or not, about October 4, 1944, you sent a wire to Associated Fruit Distributors:

"Fifteen Cars Storage U S One Emperors December Tenth Conversion Satisfactory at Two Dollars and Fifty Cents FOB Exeter Guaranty by Buyer. One Thousand Dollars Deposit on 10 Cars and Seven Hundred Fifty Dollars on Five Cars Said Deposit to Be paid Immediately on Inspection at Shipping Point. You to Arrange for Storage as Agreed. Balance of Pack Intend to Load After Oct Twentieth Will Be Glad to Make Deal on Same About the 15th of Oct.

"JOHN C. KAZANJIAN"

Did you send such a wire? A. Yes, I did.

* * *

Q. And you signed it yourself? A. Yes.

Q. Sent it through Western Union?

A. Yes. [13]

Q. And, in sending that wire, it was your intention that Mr. Crane could rely on it, wasn't it?

A. Rely on my wire. Now, the interpretation of my wire is another question.

Plaintiffs' Exhibit No. 5—(Continued)
(Testimony of John C. Kazanjian.)

Q. But you sent the wire, and you intended for Mr. Crane to rely on it, didn't you?

A. I wouldn't spend the money to send it if I didn't. I wouldn't have sent it.

Q. And you would intend that the buyers dealing with Mr. Crane would rely on your wire, wouldn't you?

A. This was strictly between Mr. Crane and myself.

Q. You knew that Mr. Crane was dealing with—— [14]

* * *

Q. You knew that it was customary in the trade for Associated Fruit Distributors to then contact buyers in reliance of the information that you furnished Mr. Crane, did you not? [15]

* * *

Examiner Griffin: I think, if the witness will recall the question, it was whether or not you thought, on the basis of usage and custom, that Mr. Crane would, in reliance on your wire, make dealings with other parties.

The Witness: Yes, on my wire, on my October 4th wire.

Q. (By Mr. Hoppenstein): Now, Mr. Crane's wire to you says:

“Referring Telephone Have Sold for Your Account Basis 2.50 Lug Net to You”——

In your wire to him you did not inform him that

Plaintiffs' Exhibit No. 5—(Continued)

(Testimony of John C. Kazanjian.)

that sale was not satisfactory, did you, Mr. [18] Kazanjian?

* * *

The Witness: Yes, I think I did. I think that was the implication of my wire.

Q. (By Mr. Hoppenstein): Will you refer to the photostatic copy of your wire, and point out any word similar to "rejection" or "not satisfactory"?

A. Yes.

Q. All right.

A. In our telephone conversations on the storage deal, one of the main things that I had insisted on was cash payment in Exeter.

Mr. Hoppenstein: I don't think the answer is responsive.

Mr. Aynesworth: I submit he is answering the question.

Examiner Griffin: He asked you if, in the wire, there was anything that indicated your rejection.

The Witness: Yes, I am coming to that.

Examiner Griffin: All right. Proceed.

The Witness: One of the things that he did not secure from me, and which I had insisted on all the time, was cash payment in Exeter of this \$1,000.00, and, another thing I insisted on was that the inspection should be in Exeter, and not out of storage, and he wasn't clear on that.

Then, another thing that he tied in with this deal, he wanted me to give—on the strength of this 15-car storage, which would have made me \$3,500.00 more

Plaintiffs' Exhibit No. 5—(Continued)

(Testimony of John C. Kazanjian.)

money—and, after all, [19] Crane had found the storage—on the strength of that he wanted me to handle all my grapes through him.

This might not be as clear if you didn't have the telephone conversation background, but, he made it appear all the time that the only way he could let me have this 15-car deal was if I would promise him, or guarantee to handle all my grapes through him. That is the interpretation I put on this, "Now, depending that you sell rest of the grapes through me," and I wrote back and said I wasn't ready yet to deal on the balance of the grapes. In other words, if he could arrive at a 15-car deal that was satisfactory, without tying in the others, I would be willing to go ahead with the deal.

So, there was three things, there seems to me. My money wasn't being paid in Exeter, the storage wasn't clear, that the buyer was assuming the risk, because there is a lot of risk in storage. Sometimes you go in—like this here, we dumped car after car that stayed in storage and spoiled. The buyer was supposed to assume that risk, and, according to our understanding, the buyer was supposed to pay cash in Exeter, and he wanted to tie in the rest of my grapes on this 15-car storage deal, which I objected to in this answer to him, and it seemed to me that—and I didn't feel that he had the kind of deal that would be satisfactory to me.

Plaintiffs' Exhibit No. 5—(Continued)

(Testimony of John C. Kazanjian.)

Q. (By Mr. Hoppenstein): I will ask you this question: [20]

Were these grapes, 15 cars intended by you to be sold to Associated, or intended to be sold by Associated to other buyers?

* * *

The Witness: They were not sold at all, to start with. We were trying to negotiate a deal that never went through, so I don't understand what you mean.

Q. (By Mr. Hoppenstein): In your negotiations with Mr. Crane for the sale of grapes raised by you or produced by you, was it your intention, in negotiating for these sales, to sell them to Associated or to buyers that Associated would find? [21]

* * *

The Witness: Well, the only answer to that is the business I did with him the previous year. He used to come over—he had a representative there. I sold him quite a few cars the year before, and they always paid me by check, and I don't know whether he kept those grapes, speculated on them, sold them himself, or was buying them for storage. I don't know his connections.

Q. (By Mr. Hoppenstein): In your dealings with these 15 cars of grapes, was it your intention to sell them outright to Associated, or to buyers that Associated would find?

* * *

The Witness: Now, wait a minute. Do I under-

Plaintiffs' Exhibit No. 5—(Continued)

(Testimony of John C. Kazanjian.)

stand that [22] right? You mean, was my intention—I mean, in my mind was I selling to Crane, Ray Crane, or was I dealing with Ray Crane with the understanding that he was negotiating for some other parties?

Mr. Hoppenstein: That is right.

The Witness: I couldn't give you a fair answer to that, because he could have done either one, and I wasn't connected.

Q. (By Mr. Hoppenstein): What was your intention in the matter?

A. There was no intention, and there was no information, as far as I was concerned. It didn't make any difference to me, just so I got my terms. If I could get my terms, Crane could handle his business any way he pleased.

Examiner Griffin: If I might interrupt, I would like to ask the witness a question.

Would you look to Mr. Crane for payment of these grapes?

The Witness: No.

Examiner Griffin: If anything happened to the grapes, would you look to Mr. Crane for payment on them?

The Witness: You mean, the deposit, the original \$1,000.00 deposit?

Examiner Griffin: No, I mean for payment. Say the grapes were lost or spoiled or destroyed, or something, would you look to Mr. Crane for payment for them?

Plaintiffs' Exhibit No. 5—(Continued)

(Testimony of John C. Kazanjian.)

The Witness: No, I guess not. I don't quite get the [23] question, your Honor. I don't get the question.

Examiner Griffin: I just want to know whether you would look for payment from Mr. Crane for the grapes on this transaction?

The Witness: If the grapes—I mean, would I expect to——

Examiner Griffin: If they went into storage, or were spoiled or something else happened to them, would you look to Mr. Crane for payment for them?

The Witness: Well, I never thought of it. I figured I was protected if I could get the \$1,000.00, and then, if there was some damage, I could sacrifice \$1,000.00 and still sell what was in storage, and come out.

Examiner Griffin: But, in case Mr. Crane were not successful in getting a commitment like that, would you look to him for payment of the grapes?

Mr. Wackerbarth: I am going to say one thing, that I think the Commissioner's question calls for a conclusion of the witness. It is immaterial whether he was going to look to Crane or not. I object to the question.

The Witness: My honest answer to that would be that at the time it never occurred to me. What I would say now would be just my conclusion now. At that time that never occurred to me, your Honor, in any way.

Plaintiffs' Exhibit No. 5—(Continued)

(Testimony of John C. Kazanjian.)

Examiner Griffin: All right. You may [24] proceed.

Q. (By Mr. Hoppenstein): Mr. Kazanjian, you never delivered 10 cars of grapes or obtained inspection for the delivery of 10 cars of U. S. No. 1 grapes to be placed in storage with government U. S. 1 certificates, did you?

A. I didn't put any grapes in storage.

Q. And you didn't deliver 10 cars of grapes to the complainants in this proceeding, did you?

A. No.

Q. State whether or not, about the middle of October, 1944, you advised Mr. Crane that you would not carry out the agreement to deliver 10 cars of grapes to West Texas Produce Company and Central Fruit & Vegetable? [25]

* * *

The Witness: Your Honor, it was about October 6th or 7th, and not on that other date that was given, that we have [26] had—well, the day after this October 4th wire, I spoke to Crane on the telephone, and he was to have his representative come up and iron out the difficulties, so it was clear to Mr. Crane on October the 5th, the day after this wire, that I didn't consider a deal made, and that he was to have his representative come up and iron out the difficulties involved, which difficulties were never ironed out. So, it was long before that October 19th that they had notice that I did not consider a deal ever having been arrived at.

* * *

Plaintiffs' Exhibit No. 5—(Continued)

(Testimony of John C. Kazanjian.)

Q. I will ask you this question:

What difficulty are you talking about?

A. The difference in the terms that he offered and the terms that I insisted on, are the difficulties I am talking about.

Q. When did you first learn that Associated had confirmed the sale of 10 cars of U. S. No. 1 grapes for your account to the complainants in this [27] proceeding?

A. I don't know when I learned. I don't know that he ever told me that he had anything definite; he said he was negotiating for some deal, but I never did know that there was ever any deal consummated, as far as I was concerned, anyway, or as far as he was concerned, for that matter.

Q. Isn't it a fact that you received a wire from the Southwest Brokerage Company, direct to you, about October 13, 1944, concerning 10 cars of U. S. No. 1 grapes, confirmed to West Texas Produce and Central Fruit & Vegetable?

* * *

Examiner Griffin: I think the witness is entitled to see the telegram before he answers the question.

Q. (By Mr. Hoppenstein): I show you a photostatic copy of a telegram marked Exhibit 13-Q, attached to the report made by Mr. T. C. Curry, dated April 3, 1946, on the investigation of this matter, and ask you if you received such a wire? [28]

* * *

Plaintiffs' Exhibit No. 5—(Continued)
(Testimony of John C. Kazanjian.)

The Witness: I don't recall it, but I must have received it. I don't remember receiving it. I don't recall that wire.

Q. (By Mr. Hoppenstein): So that at the time you knew that West Texas Produce and Central Fruit & Vegetable were claiming 10 cars of U. S. No. 1 grapes under an agreement, did you not?

A. I don't recall the wire, but I must have received it, I assume.

Q. I will ask you whether or not, around that same time, you had any conversation or dealings with Mr. Crane to obtain an offer from the West Texas Produce and Central Fruit & Vegetable Company to pay you \$3.00 net per lug in lieu of [29] \$2.50?

* * *

The Witness: Well, Crane handled all of my grapes that year, and he handled, I imagine 60 cars of grapes after these dates, and we had all kinds of offers and counter-offers and sales, so this could have been part of the usual business transaction. I don't recall the details. That happened three years ago.

Q. (By Mr. Hoppenstein): Isn't it a fact, then, around October 11, 12 and 13 of 1944, you knew that the complainants in this proceeding were claiming the right to buy, under an agreement from you, 10 cars of U. S. No. 1 grapes? [30]

* * *

Plaintiffs' Exhibit No. 5—(Continued)

(Testimony of John C. Kazanjian.)

The Witness: I am aware of the fact that at that date some people claimed that they had a deal for some grapes.

Q. (By Mr. Hoppenstein): And you advised Mr. Crane that you would refuse to ship to them under the terms of the contract that they [32] claimed?

* * *

The Witness: On October 5th, Mr. Crane knew that he felt and I felt that we hadn't arrived at a contract yet, as evidenced by our wires and subsequent telephone conversations.

Q. (By Mr. Hoppenstein): Even after that, you still refused to make shipment, didn't you?

A. My position never did change, from October 4th on to this day. That includes all dates.

Q. You were familiar with the prevailing market prices for U. S. No. 1 grapes around December 10, 1944, were you not? A. Yes, I was.

Q. What, in your opinion, was the prevailing market price? [33]

* * *

The Witness: You asked me if I knew at that time what the market was. Yes, I did know at that time, but I would be honest with you if I was to say now it would be guesswork. I think it was in the neighborhood—it depended on the brand, and it depended on the condition of the grapes. It fluctuated, I think, between—oh, I would say three and a half to four, four and a half, it might have been for some

Plaintiffs' Exhibit No. 5—(Continued)

(Testimony of John C. Kazanjian.)

of the highest, the very best brands. That is my recollection of it.

Q. (By Mr. Hoppenstein): Directing your attention to the period between October 4, 1944, and October 10, 1944, what would you say was the prevailing market price for U. S. No. 1 Emperor grapes? A. \$3.75.

Q. Isn't it a fact that grapes were quite scarce, and difficult to obtain for replacement during the period from October 10th to December 10th, and thereafter?

A. No. We had a bumper crop that year. There was a lot of grapes. The only thing was, of course, there wasn't a shortage of grapes. There was an abnormal demand, maybe, on the other end, but we had an abnormal crop of grapes.

Q. Isn't it a fact that the obtaining of confirmation for 10 cars of grapes of U. S. No. 1 grade during that period would be rather difficult? [34]

A. No, I would say that time there must have been at least 1,500 cars in storage, 2,000 cars in storage.

Q. Wasn't it the general attitude of shippers not to sell, however, and to hold the grapes for higher prices?

A. It might have been. There was always some sold. I don't know.

* * *

Q. I will ask you whether or not these photostatic [35] copies of the telegrams attached to Mr.

Plaintiffs' Exhibit No. 5—(Continued)

(Testimony of John C. Kazanjian.)

Crane's deposition are true and correct copies of the telegrams that you received and that you sent?

A. Yes, they are.

Mr. Hoppenstein: At this time we would like to offer the deposition of Mr. Crane in evidence, depending on the attitude of the Examiner, as to whether or not you want it submitted in question and answer form, or in toto. We are offering it [36] in toto.

* * *

Examiner Griffin: If there are no [37] objections, the deposition will be admitted, together with the attachments.

Mr. Aynesworth: We waive the reading of it. It may be considered read.

Examiner Griffin: Let us mark the deposition of Mr. Crane as Complainant's Exhibit No. 1, and it will be received.

(The deposition referred to was marked Complainant's Exhibit 1 and was received in [38] evidence.)

* * *

Cross-Examination

By Mr. Wackerbarth:

Q. Mr. Kazanjian, did you call Mr. Crane on the morning of the 5th of October, after you sent him this wire?

A. No. Mr. Crane called me up.

Plaintiffs' Exhibit No. 5—(Continued)

(Testimony of John C. Kazanjian.)

Q. I think you have stated that you used the date of October 5th? A. Yes.

Q. Didn't you testify that you were aware that someone did claim a right to buy grapes, and that, "On October 5th, Mr. Crane knew how I felt, that we had not arrived at a contract"?

You say that Mr. Crane knew how you felt. Did you express yourself to Mr. Crane in that regard?

A. Yes, I did.

Q. Was that by a telephone conversation?

A. Yes, it was in regard to this wire that I sent, and we discussed the terms that I had laid down in this return wire of mine.

Q. Had the ceiling gone off the grapes at that time? [40] A. No.

Q. Do you know when the ceiling did go off?

A. Oh, about three days or so, I think, after that.

Q. After which?

A. After—I think the ceiling went off about the 7th or 8th, because I recall in that telephone conversation the day following this wire, he said he would have Mr. Hoover come and straighten things out, iron it out, and arrive at a satisfactory deal. Mr. Hoover arrived about two days after that telephone conversation. By that time the ceilings had come off.

Q. Do you remember whether the ceilings went off on the 8th or the 9th, definitely?

A. I don't recall the definite date, but I know Mr. Hoover got there one day after the ceiling was off. The last conversation we had was with Mr.

Plaintiffs' Exhibit No. 5—(Continued)

(Testimony of John C. Kazanjian.)

Crane. Hoover was supposed to come and iron out the deal.

Q. In connection with this 10 cars of grapes, did you pay Mr. Crane a commission for selling [41] these?

* * *

The Witness: No. Naturally you don't pay on something you don't sell.

* * *

Q. Did you have a written contract of any kind with Mr. Crane? A. No.

Q. Did any other telegrams pass between you and Mr. Crane, other than the two telegrams which are attached to Mr. Crane's deposition, regarding this transaction?

A. No, I don't think so. I don't recall any.

Q. Did you ever send Mr. Crane a telegram rejecting the terms set forth in your telegram of October 4th?

A. Rejecting the terms of my own telegram, you say?

Q. Your own telegram, yes.

A. No, I never recall sending him any telegram rejecting my own terms of October 4th.

Q. Did you ever send him any letter or any written communication of any character? [42]

A. I don't recall.

Q. Modifying or rejecting those terms?

A. I don't recall.

Q. And the only transactions between you and

Plaintiffs' Exhibit No. 5—(Continued)

(Testimony of John C. Kazanjian.)

Mr. Crane, after the telegram of October 4th, were telephone conversations?

A. Plus conversations with his representative, Mr. Hoover, who—he used to visit me at least three or four times a week, and he was representing Crane in this transaction. He did see me almost every day, and then, about every two or three days, he and I would talk on the telephone.

Q. Mr. Kazanjian, directing your attention to this telegram of October 3rd, from Associated to you, it says:

“Referring Telephone Have Sold for Your Account Basis 2.50 Lug Net,” and so forth.

You did receive that on the 3rd, didn't you?

A. Yes, I did.

Q. And you didn't send him any telegram or letter repudiating that statement in there, did you?

A. On October 4th, I did, yes.

Q. That is the only telegram that you sent?

A. Yes, that's right.

Q. But you didn't send him anything other than that October 4th telegram? A. No. [43]

Q. You had discussed this matter from time to time with Mr. Crane before you received this telegram of October 3rd, hadn't you?

A. That's right.

Q. And in the course of the discussions, you did know that Mr. Crane was contacting other people with reference to his grapes, didn't you?

Plaintiffs' Exhibit No. 5—(Continued)

(Testimony of John C. Kazanjian.)

A. Did you say contacting, or contracting?

Q. Contacting.

A. Yes, I knew he was contacting, and he gave security that was satisfactory to me.

Q. And it was agreeable to you, was it not, that Mr. Crane contact various brokers or purchasers?

A. He was supposed to try and secure me a 15-car deal under the terms that I had discussed with him. Naturally he would have to contact some people, I assume, to make some kind of a deal.

Q. And it was agreeable to you that he did contact them, was it not?

A. Yes, it was agreeable to me to go into a 15-car deal with the terms specified, those three items that I mentioned.

Q. On five of the cars, you understood that you were to get a deposit of \$750.00?

A. I think he called up and said that he had some kind [44] of a deal pending where they objected to a \$1,000.00 deposit. They wanted to make a \$750.00 deposit, and I told him if the deposit was made in Exeter before the cars left my possession in Exeter, that the \$250.00 did not materially matter.

Q. Mr. Kazanjian, you understood that Mr. Crane—and Mr. Crane told you, didn't he, on October 3rd—that he was working on two deals, one a group of five cars, upon which a deposit of \$750.00 was to be made, and the other a group of ten cars,

Plaintiffs' Exhibit No. 5—(Continued)

(Testimony of John C. Kazanjian.)

upon which a deposit of \$1,000.00 a car was to be made? A. That's right.

Q. And you knew then that there were two different deals that he was working on?

A. That's right.

Q. And that was not objectionable to you, that the 15 cars be handled in two separate deals, was it?

A. That's right, it didn't make any difference.

Q. It was not objectionable?

A. It didn't make any difference.

Q. And, in his telegram to you of the 3rd, he mentioned that these deposits were to be paid upon receipt of U. S. 1 government inspections. You understood what that meant, didn't you, when you received this wire of October 3rd?

A. Yes, I thought I did. That would be a matter of interpretation. I think I understood clearly what was meant. [45]

Q. What did you understand that to mean?

A. I understood that to mean——

Q. That is, what did you understand at that time that that meant?

A. At that time I understood that to mean that you would take the U. S. 1 inspection on your grapes, and mail your U. S. 1 inspection to some unknown party in the east, and then wait for payment to come, and, the deal that I had insisted on, and the way I had been dealing the previous year on every car I sold, money was deposited in the Exeter bank. When I took my inspection, I took

Plaintiffs' Exhibit No. 5—(Continued)

(Testimony of John C. Kazanjian.)

it right to the bank, and the money was paid over to me by the buyers.

Q. Were you through, Mr. Kazanjian?

A. Yes.

Q. I want to call your attention to these words:

“Deposit * * * to Be Paid Upon Receipt
U. S. One Government Inspections.”

Who did you understand was to receive those government inspections as the basis of the payment of \$1,000.00?

A. I assumed whoever it was that he was dealing with, negotiating with, trying to make a deal with, some parties who were unknown to me.

Q. Then it was your understanding that this receipt of U. S. government inspections meant the receipt by the purchaser, is that correct? [46]

A. By the purchaser, whoever was purchasing them.

Q. And then, when this purchaser received this inspection, that he would then pay the \$1,000.00, is that correct?

A. That's right.

Mr. Wackerbarth: I think that is all.

* * *

Cross-Examination

By Mr. Moradian:

Q. Did you have any control or direction over what Mr. Crane of the Associated Distributors did or acted or negotiated?

A. Absolutely not.

Plaintiffs' Exhibit No. 5—(Continued)

(Testimony of John C. Kazanjian.)

Q. And in this particular deal there was no agreement on your part to pay any commission whatsoever to Mr. Crane, is that correct?

A. No. [47]

* * *

Examiner Griffin: The investigation report and the attachments thereto will be admitted as Exhibit No. 2.

(The investigation report and attachments referred to were marked Complainant's Exhibit 2 and received in evidence.)

Examiner Griffin: The complaint, together with attachments thereto, will be admitted as Exhibit No. 3.

(The complaint and attachments referred to were marked Complainant's Exhibit 3 and received in evidence.) [54]

* * *

Q. (By Mr. Moradian): Mr. Kazanjian, I will show you this document which is headed "Standard Memorandum of Sale." It is signed by Jay Margules, and it purports to be a memorandum of the sale of 10 cars of U. S. No. 1 Emperor grapes to West Texas Produce Company, Fort Worth, and Central Fruit & Produce, Dallas, and so forth.

I will ask you if, before the commencement of these proceedings, you ever saw the original of that, or a copy of it? A. No.

Q. Was there any copy ever sent you of this document? A. No.

Plaintiffs' Exhibit No. 5—(Continued)

(Testimony of John C. Kazanjian.)

Q. Did you have an opportunity at any time to authorize the execution of this document or the acceptance of this memorandum of sale?

A. No. [55]

Q. Did you know anything about such a contract or such a form of memorandum before these proceedings were instituted? A. No.

* * *

Redirect Examination

By Mr. Hoppenstein:

Q. Mr. Kazanjian, you never furnished U. S. No. 1 inspection certificates to the complainants in this proceeding, did you? A. No.

Q. I believe you testified a moment ago that Mr. Crane finally did handle your entire grape deal during 1944 and 1945, is that correct?

A. I think he handled most of it.

Q. Did you pay him a commission for the handling of that deal?

A. Well, there was a difference between the deal after the ceiling and before the ceiling. Before the ceiling they were operating without any commission of any kind. They were anxious to get the grapes, and they got paid on the other side for procurement, because the demand was so strong for grapes, and the shipper didn't have to pay any sales charge. [56]

After the ceilings went off, it went back to the general practice, where an intermediary or a bro-

Plaintiffs' Exhibit No. 5—(Continued)

(Testimony of John C. Kazanjian.)

ker was entitled to his percentage, but the deal was completely different with the ceiling, and off the ceiling. It was completely different.

Q. After the ceiling went off, on the transactions that Mr. Crane handled, you paid him a commission? A. Yes, he got a commission.

* * *

Recross-Examination

By Mr. Moradian:

Q. I will ask you, Mr. Kazanjian, if in this transaction you at any time received the confirmations that were to be forwarded to you by air mail for your signature on this deal?

A. No, absolutely not.

Mr. Moradian: That is all. [57]

* * *

JAMES P. COYN

a witness called on behalf of the complainants, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Hoppenstein:

Q. Please state your name.

A. James P. Coyn, C-o-y-n.

Q. Mr. Coyn, with whom are you employed?

A. Associated Fruit Distributors of California.

Plaintiffs' Exhibit No. 5—(Continued)

(Testimony of James P. Coyn.)

Q. In what capacity?

A. Traffic manager is my title.

Q. What are your duties?

A. Well, general traffic duties in connection with our business, and I also prepare and handle these P. A. C. A. cases.

Q. Are you acquainted with the facts in connection with the 10 cars of U. S. No. 1 Emperor grapes sold to the complainants in this case?

A. I prepared the answer to the complaint.

Q. Did you have anything to do with the negotiations for the sale of the grapes?

A. No, I did not.

Q. Did you know anything about it in the office? Was it under your supervision?

A. This particular?

Q. Yes. [58] A. No.

Q. Were the records kept under your supervision? A. Yes.

Q. Do you have an office copy of the telegram dated October 2nd, 1944, sent to Southwest Brokerage Company at Dallas? A. Yes, I do.

Q. Is that a true and correct copy of the original telegram sent by Associated to Southwest Brokerage at Dallas in connection with the 10 cars of U. S. No. 1 grapes?

A. The telegram was sent on the Western Union machine, and this is the original of it.

Q. Was that signed by Mr. Crane?

Plaintiffs' Exhibit No. 5—(Continued)
(Testimony of James P. Coyn.)

A. Signed "Associated Fruit Distributors of California."

Q. Do you know who signed it?

A. No, I do not.

Examiner Griffin: If I might interrupt?

By the "Western Union machine," you mean a teletype machine, not a T.W.S. machine?

Q. (By Mr. Hoppenstein): Typed out in your office? A. That's right.

Q. And signed in your office?

A. That's right.

Q. Is that an exact copy of the telegram that is [59] attached to the complaint as an exhibit, No. 1, that has been introduced and offered in evidence?

A. The telegram is a copy of the wire received at Dallas, I believe, rather than a copy of the wire sent, isn't it?

Q. Yes, that is a copy of the wire received.

A. A copy of the wire received at Dallas.

Q. Is the phraseology of the copy of the wire that was received and the wire that was sent, which you have in your office and now hold in your hand, the same as to phraseology? A. That's right.

Mr. Wackerbarth: In other words:

"Secured Red Lion Packing Company Confirmation Ten Cars Grapes as Outlined You Collect Deposits to Be Forwarded to Us Soons DUPJA Wired Each Car."

Is that correct?

Plaintiffs' Exhibit No. 5—(Continued)

(Testimony of James P. Coyn.)

The Witness: "DUPJA" is a code word meaning government inspection.

Q. (By Mr. Hoppenstein): And you know that telegram was sent by Associated? A. Yes, sir.

Q. In the regular course of its business?

A. Yes, sir.

Q. Do you know whether or not it would have been sent if Associated had not obtained prior confirmation from Red Lion? [60]

A. I wouldn't be able to answer that, what would have been done.

* * *

Q. (By Mr. Hoppenstein): In the regular course and usual custom of business of Associated, did you send out telegrams from your office advising purchasers that confirmation had been received for a sale when you did not have such confirmation?

A. Oh, no, not in the ordinary course of business, we do not. [61]

* * *

Q. (By Mr. Hoppenstein): Did you ever receive from Red Lion certificates of U. S. No. 1 inspection on 10 cars for the complainants in this proceeding? A. No, we did not.

Q. Do you know whether or not you made repeated demands on Red Lion for those certificates for this particular sale?

A. I don't know that any such demand was ever made.

Plaintiffs' Exhibit No. 5—(Continued)
(Testimony of James P. Coyn.)

Q. That is, to your knowledge?

A. To my knowledge.

Q. Did you ever have any dealings personally with Red Lion in connection with this transaction?

A. No.

Q. Do you know of any other telegrams or letters between Associated and Red Lion in connection with this transaction?

A. No, I do not.

Q. Have you ever seen a copy of the standard memorandum sales agreement of Southwest Brokerage Company, to the complainants?

A. I saw the copy that was attached to the original complaint.

Q. Did you ever see a copy that is in your office files?

A. Yes, I have seen it. [62]

* * *

Q. And this was received by Associated?

A. That's right.

* * *

Q. It was satisfactory with Associated, was it not, for this memorandum of sale to be issued by Southwest Brokerage, selling the 10 cars for the account of Associated Fruit Distributors? [63]

A. I didn't handle the transaction, and therefore I couldn't answer your question.

Q. After you received a copy of this standard memorandum of sale, did you offer any objection to Mr. Margules of the Southwest Brokerage Company?

A. No.

Plaintiffs' Exhibit No. 5—(Continued)

(Testimony of James P. Coyn.)

Q. Did the memorandum of sale agreement correctly reflect the agreement between Associated and the Southwest Brokerage Company on behalf of these complainants?

* * *

The Witness: No, I do not know of my own knowledge. [64]

* * *

(The deposition of Jay Margules was marked as Complainants' Exhibit No. 4 and was received in evidence.)

* * *

(The deposition of Harry Bockstein was marked as Complainants' Exhibit No. 5 and was received in evidence.) [66]

* * *

JOE MOSESMAN

a witness called on behalf of the complainants, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Hoppenstein:

Q. Please state your name.

A. Joe Mosesman, M-o-s-e-s-m-a-n.

Q. Where do you live? A. Dallas.

Q. What firm are you connected with?

A. Central Fruit & Vegetable Company.

Q. One of the complainants in this proceeding?

Plaintiffs' Exhibit No. 5—(Continued)
(Testimony of Joe Mosesman.)

A. That's right.

Q. Are you also present on behalf of the West Texas Produce Company, the other complainant?

A. That's right.

Q. How many years' experience have you had in the fresh fruit and vegetable business?

A. Since 1905.

Q. Are you licensed by the Department?

A. Sir?

Q. Are you licensed by the Department?

A. Yes, sir.

Q. The West Texas Produce Company, to your knowledge, is licensed by the Department? [67]

A. That's right.

Q. Do you recall the transaction involving the purchase of 10 cars of U. S. No. 1 Emperor grapes about October 3, 1944? A. I do.

Q. Did you handle the transaction on behalf of Central Fruit and West Texas Produce Company?

A. Correct.

Q. Please state who first contacted you with reference to——

A. Southwest Brokerage Company.

Q. That is Mr. Margules?

A. Mr. Jay Margules. [68]

* * *

Q. What did Mr. Margules tell you?

A. That he had a wire from the Associated Fruit Company offering all 15 cars U. S. No. 1 grapes at \$2.50 a lug.

Plaintiffs' Exhibit No. 5—(Continued)

(Testimony of Joe Mosesman.)

Q. What did you do about that offer from Mr. Margules?

A. I told him the deal is satisfactory, with the amount of deposit that was required.

Q. Did you require that he contact West Texas Produce Company with reference to division of the cars?

A. That's right.

Q. How many cars was West Texas Produce to receive?

A. Well, it was understood about half each.

Q. Didn't you then agree that West Texas would get six cars, and that you would get four?

A. That's right.

* * *

Q. Did you understand the price that you were to pay for the 10 cars of grapes? [69]

A. Yes, sir, it was \$2.50, plus \$3.00 Associated Fruit Company, plus three cents per lug Southwest Brokerage Company.

Q. I hand you a copy of a standard sales agreement from Southwest Brokerage Company to West Texas Produce Company, Fort Worth, and Central Fruit and Produce, Dallas, dated October 4, 1944, and ask you whether or not you received that memorandum of sale agreement?

A. That's right.

Q. Did you agree to the terms set out in that memorandum of sale agreement?

A. Correct.

Q. The name, Central Fruit and Produce as listed on this memorandum, is that the Central

Plaintiffs' Exhibit No. 5—(Continued)

(Testimony of Joe Mosesman.)

Fruit & Vegetable Company, the complainant here?

A. That's right.

Q. Did you ever receive the 10 cars of U. S. No. 1 grapes? A. We did not.

Q. Were you ready, willing and able to perform, by paying the \$1,000.00 deposit for each of the 10 cars, upon being furnished these U. S.—

A. U. S. No. 1 certificate as to the grade, and also storage arrangements when the grapes was to be in storage.

Q. Did you have the money in the bank available to make those deposits?

A. We did—or, I did, rather. [70]

Q. When did you first learn that neither the Associated nor Red Lion Packing Company were making delivery of the 10 cars to you?

A. Well, they were supposed to go in storage at the beginning of—October 10, I believe. Well, now, I am not quite sure about the dates exactly, but, at any rate, those cars were supposed to be packed as grade grapes, as U. S. No. 1, and when the grapes is placed in storage with government certificates as to the grade, and then we are supposed to wire the money, \$1,000.00 per car.

Q. When did you learn that they were not going to deliver you those grapes? Were you ever informed that they would not?

A. No, not until the ceiling was lifted.

Q. Then you were informed that they wouldn't deliver you the grapes? A. That's right.

Plaintiffs' Exhibit No. 5—(Continued)

(Testimony of Joe Mosesman.)

Q. Did you make an effort to insist on the delivery of the grapes to you in conformity with the agreement? A. We tried.

Q. But you weren't able to get them?

A. That's right. [71]

* * *

Q. State whether or not you made any effort to obtain the purchase of 10 other cars of grapes.

A. I did. I was unable to do so.

Q. What efforts did you use and what steps did you take in order to obtain the purchase of additional cars?

A. Well, we tried several different brokers to obtain grapes, and they wasn't available.

Q. What brokers did you contact?

A. Well, we have contacted Roy Wright for one, B. F. Taylor, for another, and also we tried Southwest Brokerage Company.

Q. Were you able to purchase any cars of grapes to replace those that you had contracted for?

A. No, we couldn't contract any of them. We succeeded in getting just a few. [72]

* * *

Q. In order to refresh your memory, I will ask you to state the exact number of grapes that Central Fruit & Vegetable Company purchased after October 10, 1944.

* * *

The Witness: The only one that I was able to

Plaintiffs' Exhibit No. 5—(Continued)

(Testimony of Joe Mosesman.)

get is one car from Heggblade-Margules Company, and also one car they split between West Texas Produce Company and ourselves. That one was bought from the Western Fruit Growers of Los Angeles. That was all.

Q. (By Mr. Hoppenstein): And the other replacements were made by West Texas [73] Produce Company? A. Yes, that's right.

Q. What prices did you pay for the grapes that you were able to replace?

A. Well, there was various different prices all the way from \$3.25 to \$4.25, depending on the quality.

Q. On these particular shipments that you bought? A. \$3.25 and \$4.15.

Q. In other words, one car was \$4.15 and the other one was \$3.25? A. That's right.

Q. I believe you have been experienced in the business of handling——

Examiner Griffin: If I might interrupt?

Was that for a standard car of so many lugs?

The Witness: Well, there are so many lugs. They haven't any standard loading. Some cars are loading more than others. It depends on the dimension of the cars.

Examiner Griffin: How many lugs to a car in this particular instance?

The Witness: This was 1,125 lugs, one particular car.

Plaintiffs' Exhibit No. 5—(Continued)

(Testimony of Joe Mosesman.)

Examiner Griffin: What was the price for that 1,125 lugs?

The Witness: \$3.25.

Examiner Griffin: All right. [74]

Q. (By Mr. Hoppenstein): How many lugs were there in the other car?

A. This other one was 1,105, at \$4.15.

Q. Based on your experience in engaging in the business of dealing in and handling fresh fruits and vegetables, did you know what the prevailing market price for U. S. No. 1 grapes was on or about December 10, 1944?

* * *

A. Yes.

Q. What was that prevailing price?

A. Well, that would depend on the quality. U. S. No. 1 grapes, they was quoted as high as \$4.50 f.o.b.

Q. And on or about December 10, 1944, what was the prevailing market price that was being quoted to you? A. Around \$4.00, \$4.25.

Q. Even on those quotations, state whether or not you were able to actually buy, and attempted to buy 10 cars of grapes at those figures, of U. S. No. 1 Emperors?

A. On any price, I couldn't have bought that many.

Q. Were you willing to buy them, and made offers to buy them? A. That's right.

Q. Were you able to get any confirmation from any shippers for the sale to you? [75]

Plaintiffs' Exhibit No. 5—(Continued)
(Testimony of Joe Mosesman.)

A. I was unable to get any confirmation on any amount of grapes.

Q. And those two cars were the only ones that you were able to purchase yourself?

A. That's right.

Q. By refreshing your memory, can you get the dates that you were actually able to make those particular purchases? Is that reflected on that memorandum? Did you prepare that memorandum from your records?

A. Yes. That happened on the 24th, '44.

Q. October? A. October 24, 1944.

Examiner Griffin: Both cars were purchased on that date?

The Witness: One of them on the 15th; the first on the 15th of '44, and one on the 10th and the 24th.

Examiner Griffin: The one that was purchased on the 15th, was purchased at what price?

The Witness: At \$4.15.

Examiner Griffin: And the other one?

The Witness: On the 24th, at \$3.25.

Q. (By Mr. Hoppenstein): Were grapes difficult to obtain from shippers? A. That's right.

Q. After you had received your contract for the purchase of the 10 cars of U. S. No. 1 grapes, had you made arrangements [76] to sell them, or had you resold them?

A. Well, there was quite a few of them sold.

Q. How many had you sold?

Plaintiffs' Exhibit No. 5—(Continued)

(Testimony of Joe Mosesman.)

A. Well, I would say I practically sold all of them, excepting one car. [77]

* * *

Q. (By Mr. Hoppenstein): I will ask you whether or not you received a telegram from the Playel State Marketing News Service, about December 15, 1944, relative to the quotations on the prevailing prices for U. S. No. 1 Emperors?

A. That's right.

Q. Is that the telegram that you received?

A. That's right.

Mr. Hoppenstein: We will ask the Examiner to please identify it as an exhibit.

Examiner Griffin: It will be identified as Exhibit 6.

(The telegram referred to was marked Complainants' Exhibit 6 for identification.)

* * *

Mr. Hoppenstein: We now offer Exhibit No. 6 in evidence. [79]

* * *

(The telegram marked Complainants' Exhibit 6 for identification was received in [80] evidence.)

* * *

Q. (By Mr. Hoppenstein): I will hand you a telegram addressed to Southwest Brokerage Company, Dal., signed Heggeblade-Margules Company, with a date line, San Francisco, California, 24-21,

Plaintiffs' Exhibit No. 5—(Continued)
(Testimony of Joe Mosesman.)

7P, and ask you whether or not this telegram was received by Southwest Brokerage Company in your behalf? A. That's right. [81]

* * *

(The telegram heretofore marked Complainants' Exhibit No. 7 for identification was received in evidence.)

* * *

Q. (By Mr. Hoppenstein): A telegram with the date line Los Angeles, California, October 30, 1944, addressed to Bill Taylor, broker, signed Western Fruit Growers, Incorporated, and one dated November 20, 1944, addressed to Wright & Company, Produce Exchange Building, Dallas, signed Pacific Fruit Exchange.

I will ask you whether or not those telegrams, addressed to Mr. Bill Taylor and Wright & Company, were received at your request?

A. Yes, sir.

Mr. Hoppenstein: We offer these in evidence.

Examiner Griffin: They will be received and marked Exhibits Nos. 8 and 9.

(The telegrams referred to were marked Complainants' Exhibits Nos. 8 and 9, and were received in evidence.) [82]

* * *

Q. (By Mr. Hoppenstein): Was this memorandum of the grapes that you purchased prepared by you and under your supervision?

Plaintiffs' Exhibit No. 5—(Continued)

(Testimony of Joe Mosesman.)

A. Yes, sir.

Mr. Hoppenstein: We offer this memorandum in evidence, and ask the Examiner to please identify it.

Examiner Griffin: It will be identified as Exhibit No. 10.

(The memorandum referred to was marked Complainants' Exhibit No. 10 for identification.)

Examiner Griffin: I suppose opposing counsel would like to see it (handing).

Q. (By Mr. Hoppenstein): Did you see the telegrams that were received by Mr. C. H. Robinson at Fort Worth, from the Nash-DeCamp Company in connection with the quotation of replacement grapes for the U. S. No. 1? A. Yes, sir.

Q. Who is Nash-DeCamp Company, do you know?

A. Nash-DeCamp Company is one of the largest grape shippers in California.

Q. I will ask you whether or not you know who the Western Fruit Growers, Incorporated, are? [83]

A. Yes, sir.

Q. Who are they?

A. Grape shippers. They also ship other commodities, but they principally ship grapes.

Q. Do you know who Pacific Fruit Exchange is?

A. Yes, I sure do.

Q. Who are they?

A. Grape shippers, one of the best in—

Plaintiffs' Exhibit No. 5—(Continued)
(Testimony of Joe Mosesman.)

Q. Do you know who Heggeblade-Margules & Company is?

A. They are one of the outstanding ones.

Q. I hand you a telegram dated October 24, 1944, addressed to C. H. Robinson Company, Fort Worth, from Nash-DeCamp Company, and a certified copy of a telegram from Nash-DeCamp Company, dated December 17, 1944, addressed to C. H. Robinson Company, and ask you whether or not you know if these telegrams were received by Mr. Robinson in behalf of the West Texas Produce Company?

A. Yes, sir.

Mr. Hoppenstein: We ask that these be identified, and offer them. [84]

* * *

Q. (By Mr. Hoppenstein): On this telegram dated December 17, 1944, and certified by C. H. Robinson Company, Frank Sims, do you know Mr. Sims? A. I know him personally, well.

Q. Do you know his handwriting?

A. Yes, sir.

Q. Is that his handwriting on that certificate?

A. Yes, sir.

* * *

Mr. Hoppenstein: Do you know where the original telegram is?

The Witness: No, sir, I do not.

Examiner Griffin: Do I understand, counsel, that you are offering these two telegrams in evidence?

Plaintiffs' Exhibit No. 5—(Continued)

(Testimony of Joe Mosesman.)

Mr. Hoppenstein: Yes, sir.

* * *

(The telegrams referred to were marked Complainants' Exhibits Nos. 11 and 12, and were received in evidence.) [85]

Examiner Griffin: Are you offering this memorandum in evidence, counsel?

Mr. Hoppenstein: Yes.

* * *

(The memorandum heretofore marked Complainants' Exhibit No. 10 for identification was received in evidence.)

* * *

Q. (By Mr. Hoppenstein): I will hand you an instrument, and ask you to please state what that is, Mr. Mosesman.

A. That is an invoice from Western Fruit Growers, [86] Incorporated, on a car of grapes, 1,105 display lugs at \$4.25.

Q. Is that the invoice on the car of grapes that you testified to a moment ago, for the 1,105 lugs that were divided between you and West Texas Produce Company? A. That's right.

Q. While the invoice is being circulated among counsel, I will ask you whether or not this is an invoice and drafts showing payment to Nash-DeCamp Company on the car of grapes that was purchased from them? A. Yes, sir.

Plaintiffs' Exhibit No. 5—(Continued)
(Testimony of Joe Mosesman.)

Q. It also contains a government inspection certificate attached? A. That's right.

Mr. Hoppenstein: We ask that these be identified as exhibits, and offer them in evidence.

Examiner Griffin: The invoice from Western Fruit Growers, Inc., covering 1,105 lugs at \$4.25 a lug, will be identified as Exhibit No. 13.

(The invoice referred to was marked Complainants' Exhibit No. 13 for identification. [87])

* * *

(The group of papers referred to were marked Complainants' Exhibit No. 14 for identification.)

Examiner Griffin: Are there any objections?

Mr. Moradian: The same objection as heretofore interposed by us to all this line of testimony.

Mr. Aynesworth: The same for the Respondent Kazanjian.

Examiner Griffin: The objections will be overruled, and the exhibits received in evidence.

(The invoice and group of papers heretofore marked Complainants' Exhibits Nos. 13 and 14, respectively, for identification were received in evidence.)

* * *

Q. (By Mr. Hoppenstein): I hand you an invoice from C. H. Robinson and Company to West Texas Produce Company, dated January 22, 1945, to West Texas Produce Company at Fort Worth,

Plaintiffs' Exhibit No. 5—(Continued)

(Testimony of Joe Mosesman.)

for 1,098 lugs of Emperor grapes, for the account of Zaninovich Brothers, Orange Cove, California, and ask you whether or not that is an invoice for the car of grapes purchased by West Texas?

A. Yes, sir. [88]

* * *

Mr. Hoppenstein: We offer that.

Examiner Griffin: The document marked an invoice from C. H. Robinson Company, dated January 22, 1945, covering 1098 lugs of grapes at \$5.00, will be admitted in evidence as Exhibit No. 15.

(The invoice referred to was marked Complainants' Exhibit No. 15 and was received in evidence.)

Mr. Hoppenstein: Likewise, I wish to offer in evidence an invoice of Nash-DeCamp Company to West Texas Produce Company, dated October 31, 1944, with a shipping point, Exeter. [89]

Q. (By Mr. Hoppenstein): Is that invoice from Nash-DeCamp for the 1,100 lug car?

A. Yes.

Mr. Hoppenstein: We offer that in evidence.

* * *

(The invoice referred to was marked Complainants' Exhibit No. 16 and was received in evidence.)

Q. (By Mr. Hoppenstein): I hand you this bank statement from Mercantile National Bank.

Plaintiffs' Exhibit No. 5—(Continued)
(Testimony of Joe Mosesman.)

Does that reflect the status of the account of Central Fruit & Vegetable Company? [90]

* * *

A. That's right.

Q. On those dates? A. That's correct.

Q. This shows that on November 29, 1944, you had \$36,942.28 balance in the bank, is that correct?

A. That's correct.

Q. And that on December 9, 1944, you had \$33,098.83 in the bank, is that correct?

A. That's correct. [91]

Q. And you continued to have a balance in excess of \$30,000.00 through December 30, 1944?

A. That's right.

Q. And on December 30, 1944, you had \$51,760.53 in the bank? A. That's correct.

Q. Did you continue to maintain that bank balance during that period? A. Yes, sir.

Q. Did you have a similar bank balance during the entire month of October, 1944?

A. Yes, sir.

Mr. Hoppenstein: We offer that in evidence.

Examiner Griffin: The statement from the Mercantile National Bank of Dallas, Texas, in account with Central Fruit & Vegetable Company, consisting of a two-page document showing the amount on deposit, the checks drawn against the amount, and so forth, will be received in evidence as Exhibit No. 17.

Plaintiffs' Exhibit No. 5—(Continued)

(Testimony of Joe Mosesman.)

(The statement referred to was marked Complainants' Exhibit No. 17 and was received in evidence.) [92]

* * *

Cross-Examination

By Mr. Wackerbarth: [94]

* * *

Q. Who did you talk to about this deal?

A. Harry Bockstein.

Q. When did you talk to him?

A. Just prior to Southwest Brokerage submitting a 10-car grape deal.

Q. What was that conversation?

A. I told him that Southwest Brokerage Company offered to sell to the Associated Fruit Company 10 to 15-car grapes at the price of \$2.50, and I also asked him how many would he want, and he agreed to take 6, and I agreed to take 4.

Q. Did you have any connection with the Southwest Brokerage Company? A. Not any at all.

Q. Then you talked with Mr. Jay Margules first, didn't you? A. That's right.

Q. And you found out from Mr. Margules that there was an offer on behalf of Associated Fruit, is that correct? [97] A. That's right.

Q. Then you communicated the fact to the West Texas people? A. That's right.

Q. Is that correct? A. That's right.

Plaintiffs' Exhibit No. 5—(Continued)

(Testimony of Joe Mosesman.)

Q. What did Mr. Margules tell you?

A. He told me that he could secure confirmation on 10-car grapes at \$2.50, U. S. No. 1.

Q. All right. What were the terms of the sale, with reference to payment?

A. To make a deposit of \$1,000.00 on each car, as they go into storage.

Q. \$1,000.00 as they go into storage?

A. That's right, at any time they obtained government inspection on them.

Q. What was it? At the time they go into storage, or any time that you obtained government inspection?

A. Well, at the time they obtained government inspection as to the grade.

Q. Who was to obtain the government inspection?

A. Well, that was left entirely up to the Associated Fruit Company.

Q. I didn't ask you that. What was said about who was going to obtain government inspection? [98]

A. Well, what's-his-name was the one that said he will get government inspection.

Q. What did Mr. Margules tell you about who was going to get government inspection?

A. Well, the Associated Fruit Company.

Q. They were to get the government inspection?

A. That's right.

Plaintiffs' Exhibit No. 5—(Continued)

(Testimony of Joe Mosesman.)

Q. Where was the government inspection to be made? A. Where was it to be made?

Q. Yes.

A. Well, either at the shipping point or at storage point.

Q. Either one? A. I presume so.

Q. What were you told by Margules?

A. By Margules I was told that government inspection was to be obtained, and when that was obtained, we were supposed to put up \$1,000.00 a car.

Q. How was this government inspection to be evidenced? A. That I don't know.

Q. Were you to be furnished with a certificate of inspection? A. That's right.

Q. And were you to put up your money before you received that certificate of inspection? [99]

A. No, we were supposed to put up the money after we get a certificate of inspection.

Q. Is that what Margules told you the deal was?

A. That's right.

Q. Then Margules told you that he had a deal in which he could confirm 10 cars of U. S. No. 1 Emperor grapes? A. That's right.

Q. That they were to be government inspected?

A. That's right.

Q. And that, upon inspection by the government, and the delivery to you of the certificate of inspection, that you were to put up the \$1,000.00, is that correct? A. That's right.

Plaintiffs' Exhibit No. 5—(Continued)

(Testimony of Joe Mosesman.)

Q. That is the deal that was given to you?

A. That's right.

Q. Was that the deal you accepted?

A. That's the deal I accepted, yes.

Q. How far is Margules' place from yours?

A. Well, at that time it was not over a block.

Q. Did you see any telegrams?

A. Yes. He showed me a telegram from the Associated.

Q. All right, he showed you telegrams. What telegrams did he show you?

A. From the Associated, confirming 10-car grapes.

Q. I want to show you first a telegram here which the [100] Department, in its report, has designated as Exhibit 13-A. I want you to look at that and see whether or not that telegram was shown to you, the original of that telegram?

A. Which one? Right here on this front page (indicating)?

Q. Yes.

* * *

The Witness: Yes, I remember him showing me that telegram. However, I didn't want to accept that grade grapes.

Q. (By Mr. Wackerbarth): I didn't ask you that. I asked you if he showed you that telegram.

A. That's right.

Q. He did. In the telegram did you understand the code word "AFOHD"—this word, here (indi-

Plaintiffs' Exhibit No. 5—(Continued)

(Testimony of Joe Mosesman.)

eating)—“AFOHD.” Did you understand what that meant? A. Is that a code word?

Q. What does it mean? A. I can't say.

Q. You don't know what it means, do you?

A. Not right now, I couldn't.

Q. Then there was another code word in there, “CORLU.” [101] Did you know what that meant at that time? “ADLAM CORLU.” Did you know what that meant?

A. Not unless it is translated.

Q. Did you know what it meant at that time?

A. I don't remember now.

Q. Was it translated to you at that time?

A. Well, I suppose it was, but I don't remember now.

Q. Do you know what the code word “ALBIEIQ” means? A. No.

Q. You didn't know what that was?

A. No, not unless it was translated.

Q. Was that translated to you at that time?

A. Well, I don't remember.

Q. You don't remember.

I will ask you whether or not he showed you, subsequent to that, a teletype message?

A. No, I don't remember him showing me a teletype message.

Q. Did he tell you that he had been talking with Mr. Crane over the teletype about this?

A. That's right.

Q. He told you that, didn't he?

Plaintiffs' Exhibit No. 5—(Continued)
(Testimony of Joe Mosesman.)

A. That's right.

Q. Did he tell you what Mr. Crane had said to him over the teletype? [102]

A. Well, no, I don't remember if he did say anything.

Q. Did he tell you anything about the teletype conversation?

A. Well, I can't remember that.

Q. I will ask you whether or not you were told that Mr. Margules teletyped Mr. Crane as follows:

“Referring to the Quotation on Nine Cars
US One and Nine Unclassified Emperors Do
We Have to Buy All of Them or Can We Get
Someone Buy Possible Couple of Each Go
Ahead.”

And, the reply from Mr. Crane to Mr. Margules was:

“Believe We Could Work Out the Deal on
Block of Two to Three Each. Submit It and
Will See if Can Work Out.”

Did he tell you that those were the teletype messages that passed between them? A. No, sir.

Q. Did he tell you that he had been teletyping to Crane?

A. Well, with reference to that, I don't know whether he telephoned him or whether he teletyped.

Q. Did he tell you that he either telephoned or teletyped? A. I don't remember that.

Q. You don't remember whether he told you that? [103] A. That's right.

Plaintiffs' Exhibit No. 5—(Continued)

(Testimony of Joe Mosesman.)

Q. Then I will ask you whether or not he showed you a telegram, which I show you now as Exhibit 13-B attached to the report of the investigator.

A. Yes, I remember that.

Q. You saw that one. After that telegram, did he tell you that he was going to teletype to Crane or Associated again? A. Would he?

Q. Did he tell you that he proposed to teletype or telephone or telegraph Associated?

A. Well, as far as I know, he told me he was going to get in touch with the Associated Fruit Company as to the deal.

Q. Did he tell you what he was going to ask them?

A. Well, what I told him, I remember. Now, what he told me, I don't remember. All I told him was that I was interested in 10-car No. 1 grapes.

Q. That is all you told him?

A. That's right.

Q. That was the time that he showed you this telegram, Exhibit 13-B? A. That's right.

Q. Now I will ask you whether or not he told you, after he showed you that telegram, 13-B, that he was going to teletype to the Associated Fruit Distributors as follows:

“Referring to That 6 Emperors Fort Worth and 4 [104] Dallas Deal OK 2.50 Net 5.///50.00 for U If Legal. Presume Its Legal or U Wouldn't Offer It. Advise.”

Plaintiffs' Exhibit No. 5—(Continued)

(Testimony of Joe Mosesman.)

Did he tell you that he was teletyping that message to Crane? A. No, sir.

Q. Did he tell you that he had teletyped that message to Crane? A. No, sir.

Q. Did you know that he did teletype that message to Crane? A. No, sir.

Q. I will ask you whether or not, after you had seen the telegram, Exhibit 13-B, did Mr. Margules tell you that he received a teletype message from Crane as follows:

“Haven't Been Able Contact the Shipper Yet but Sure It's Okay. Will Wire U Definitely One Way or Other Soon's Get Him. Yes It Is Legal Naturally a Receiver Can Pay His Whole Markup for Buying Brokerage if He Wants to Will Wire U Soon Receive Definite Confirmation.”

Did he tell you that he had received that teletype message from Mr. Crane?

A. Yes, I remember that.

Q. He told you that? A. Yes.

Q. Then did he tell you this, that this was another [105] teletype message from Crane to him:

“Understand Its Basis 1000.00 Deposit Against Each US One in Section as They R Loaded. What Else New Go Ahead Far as I Know That Covers It. Try Wire Nite Sure Thx End.”

Did he tell you that that was a teletype that Crane teletyped to him? A. I don't remember.

Plaintiffs' Exhibit No. 5—(Continued)

(Testimony of Joe Mosesman.)

Q. Don't you remember some conversation about the \$1,000.00 deposit against each U. S. No. 1 as they were loaded? A. Yes, sir.

Q. He told you that, didn't he?

A. Yes, sir.

Q. And he told you that the payment was to be made when they were loaded?

A. That's right.

Q. That as soon as it was loaded, they were to be paid for?

A. As soon as the government certificate is obtained, and they are entitled to get the money.

Q. That isn't what I asked you. I asked you whether or not he told you at that time that the deal that he was discussing with Crane was that the \$1,000.00 deposit against each car of U. S. No. 1's would be paid as they were loaded?

A. That's right. [106]

Q. Did he tell you that? A. Yes, sir.

Q. He told you that was his deal with Crane, didn't he? A. That's right.

Q. And that was agreeable to you, wasn't it?

A. Yes, sir.

Q. In this telegram, or these teletype messages, there was some discussion about \$50.00, and whether or not it was legal. What did he tell you about that?

A. He just mentioned the fact, whether or not it is legal or not. Of course, I wasn't interested in that part at all.

Plaintiffs' Exhibit No. 5—(Continued)

(Testimony of Joe Mosesman.)

Q. You knew what it meant, didn't you?

A. Not necessarily.

Q. What did it mean, according to your opinion, at that time?

A. Well, it was a question whether they can charge procurement charge.

Q. Didn't Mr. Margules tell you that he was willing to pay Mr. Crane a procurement charge?

A. Well, yes, I agreed with him to pay his \$50.00, yes.

Q. You were willing to pay Crane \$50.00 for getting these cars for you, weren't you?

A. That's right.

Q. And you knew that Crane was going to try and get [107] these various cars for you, didn't you, for you and Margules?

A. That's right.

Q. And you knew that you were going to pay Crane \$50.00 a car for getting these cars for you, isn't that right?

A. That's right.

Q. You understood that?

A. That's right.

Q. And that is what Mr. Margules told you?

A. That's right.

Q. You were agreeable to paying that, weren't you?

A. Yes, sir.

Q. Who were you going to pay this 3 per cent brokerage to?

A. Southwest Brokerage Company.

Q. And you were willing to pay that?

A. That's right.

Plaintiffs' Exhibit No. 5—(Continued)

(Testimony of Joe Mosesman.)

Q. Did you see the confirmation which Associated sent to them on the 2nd of October? I will show you the telegram. Did you see this telegram (indicating)? I am showing you now the copy of the telegram of October 2nd from Associated to Southwest Brokerage.

Did Mr. Margules show you that telegram?

A. Yes, sir.

Q. He showed you that? A. Yes. [108]

Mr. Wackerbarth: I want to read into the record the telegram that I have just shown to the witness. It says:

“Secured Redlyon Packing Company Confirmation Ten Car Grapes as Outlined You Collect Deposits to Be Forwarded to Us Soon’s DUPJA Wired Each Car.”

A. I wouldn’t know, unless it was translated.

Q. You don’t know, do you? A. No.

Q. When he showed you that telegram, you didn’t know what it meant, did you?

A. No, not unless it was translated.

Q. What did he tell you at that time? Did he tell you that that was the deal with reference to the \$1,000.00?

A. The deal was, if the grapes is loaded in the car and obtained government inspection, we are supposed to forward the money. [109]

Q. Were you supposed to forward the money just as soon as the government inspection was made? A. Yes, sir.

Plaintiffs' Exhibit No. 5—(Continued)
(Testimony of Joe Mosesman.)

Q. Or until you received the certificate of the inspector?

A. The money was supposed to be forwarded just as soon as government inspection is obtained.

Q. Whether you see the certificate or not, is that correct? A. That's right.

Q. Did you see this standard memorandum of sale, this confirmation that Mr. Margules made out? A. Yes, sir.

Q. And you saw it before it was sent in, didn't you? A. Yes, sir.

Q. And the terms in that standard memorandum of sale were agreeable to you? A. Yes, sir.

Q. And up at the top, with reference to this sale, it says that it was sold through a telephone conversation between Harry Bockstein, does it—

A. That's right.

Q. —and telegram of Joe Mosesman?

A. That's right.

Q. What part of the telegram did you [110] send?

A. I never sent any telegrams to anyone. That was just a telephone conversation. He agreed to buy 10 cars and split them with West Texas Produce Company.

Q. Wait a minute. This is between West Texas Produce Company and Central Fruit and Associated on account of Red Lion, isn't it?

A. That's right.

Q. What part did you take in that deal with

Plaintiffs' Exhibit No. 5—(Continued)

(Testimony of Joe Mosesman.)

reference to the telegram here that has your name after it, Joe Mosesman?

A. What telegram do you refer to?

Q. I don't know. That is what I am asking you.

A. Well, I don't know.

Q. You see down there that it says "telegram," don't you? A. Where?

Q. Right up there (indicating), it says "telegram, Joe Mosesman."

A. Well, now, it is "telephone, Joe Mosesman."

Q. No, it is "telephone, Harry Bockstein," isn't it?

A. That's right, and he phoned me, too. It was done by telephone. That was never done by telegram.

Q. And there were no telegrams that you have had any part in, is that correct?

A. That's right. [111]

Q. But you did see these various telegrams that were sent to Mr. Margules?

A. Some of them I have saw, yes.

Q. I want to show you this confirmation. You knew that at the time this confirmation was shown to you, Red Lion Packing Company was the shipper, didn't you?

A. Well, that is questionable. I couldn't answer that. All I knew is that I had dealings with the Associated Fruit Company, the original deal.

Q. You knew that the Associated or Mr. Crane was trying to get some grapes for you, didn't you?

Plaintiffs' Exhibit No. 5—(Continued)

(Testimony of Joe Mosesman.)

A. That's right.

Q. And you knew he was trying to get them from somebody, didn't you? A. Well, yes.

Q. At the time——

A. At the beginning of it, I didn't know anything about it, no, sir.

Q. But, on the second day of October, 1944, you did know who Mr. Crane was trying to get the grapes from, didn't you?

A. Well, I understood that Red Lion Packing Company was underwriting that order.

Q. Then you understood, on the morning of the third of October, that Mr. Crane was trying to get for you from the [112] Red Lion Packing Company 10 carloads of Emperor grapes, is that correct?

A. Yes, sir.

Q. And that was satisfactory to you for him to try and get those grapes for you, wasn't it?

A. Well, yes. I wasn't particularly interested in where he was getting them from.

Q. But you were agreeable to him getting them from Red Lion, weren't you?

A. I understood when I got a confirmation that Red Lion Packing Company was supposed to supply that order.

Q. Didn't you know before?

A. Previous to that? No, sir.

Q. Before this standard memorandum of sale was prepared, didn't you know that Red Lion

Plaintiffs' Exhibit No. 5—(Continued)

(Testimony of Joe Mosesman.)

Packing Company was going to furnish these grapes?

A. At the beginning of the deal, I didn't know who was going to furnish the 10 cars of grapes. Later on I found out that the Red Lion Packing Company was the one to furnish the grapes.

Q. You saw this telegram of October 2nd, didn't you? A. Yes.

Q. When you saw that telegram, then you knew that Red Lion Packing Company was going to furnish the grapes, didn't you? [113]

A. That's right.

Q. And that was on the second of October?

A. Well, I suppose it was.

Q. After you read this telegram of October 2nd, did Mr. Margules tell you that the \$1,000.00 was to be paid as soon as the government inspection was wired, or as soon as the government inspection was made?

A. As soon as the government inspection was wired—well, let me see now—as soon as the government inspection was made.

Q. Was made? A. That's right.

Q. That was your understanding?

A. That's right.

Q. Just as soon as the government inspection was made, regardless of what the inspection was, you were to wire the \$1,000.00?

Plaintiffs' Exhibit No. 5—(Continued)
(Testimony of Joe Mosesman.)

A. Not regardless of what the inspection was. It was based on U. S. No. 1 quality.

Q. So that if the fruit wasn't U. S. No. 1—

A. Then it was optional to me to take it or leave it.

Q. And that was your understanding now?

A. That's right. I bought U. S. No. 1 grapes.

Q. Mr. Mosesman, you knew, on or about the 9th of October that the Red Lion Packing Company did not intend to [114] ship those 10 cars, didn't you?

A. Well, I suppose so. October when? The 9th?

Q. October 9th.

A. I guess so. That is when they refused to ship it.

Q. When did you first find out that Red Lion did not intend to ship those 10 cars?

A. Well, that happened just as soon as the ceiling was raised, I suppose.

Q. When was that?

A. I can't remember that exactly.

Q. That was around the 8th or 9th, wasn't it, the 7th, 8th, 9th, thereabouts?

A. Along abouts.

Q. Who told you that the Red Lion didn't intend to ship?

A. Southwest Brokerage Company, Mr. Margules.

Plaintiffs' Exhibit No. 5—(Continued)

(Testimony of Joe Mosesman.)

Q. What did you do then about securing other red Emperors, U. S. No. 1 grapes?

A. Well, I tried, but I was unable to get any.

Q. You were unable to get any?

A. That's right.

Q. You were offered U. S. 1 grapes, were you not?

A. Yes, that is true, I was offered U. S. No. 1 grapes for sale, but I never was able to get any of them.

Q. Didn't you receive telegrams to the effect that Red Lion Packing Company would furnish you U. S. 1 Emperor grapes [115] at \$3.00?

A. Yes, sir, not with U. S. No. 1, he didn't.

Q. What did he tell you? A. Unclassified.

Q. Red Emperor grapes? A. Yes.

Q. What price did they offer them to you at?

A. Well, if I remember exactly right, it was around \$3.00, \$3.25.

Q. When was that offer made to you?

A. That was after the ceiling was raised.

Q. You rejected that offer, didn't you?

A. That's right.

Q. Then did you inquire from anyone else as to whether or not you could get U. S. No. 1?

A. I have tried, yes.

Q. Who did you try?

A. Well, you mean, as far as my brokers is concerned, or the shippers?

Plaintiffs' Exhibit No. 5—(Continued)
(Testimony of Joe Mosesman.)

Q. No. What did you do about trying to get U. S. 1's as soon as you knew?

A. I have contacted several different brokers.

Q. Who did you contact?

A. Bill Taylor, for one. Roy Wright, for another. Southwest Brokerage Company, for a [116] third.

Q. And they were all in Dallas, Texas?

A. That's right.

Q. Did you communicate at that time, that is, immediately upon hearing that Red Lion would not ship, did you contact anybody in California?

A. Direct, or through a broker?

Q. Direct. A. Direct, I did not.

Q. Who did you contact in California through a broker during the days of the 9th to the 15th of October, 1944?

A. Well, I just said Southwest Brokerage Company, for one, Bill Taylor for another, and Roy Wright, for a third.

Q. Those were Dallas, Texas, brokers?

A. All of them.

Q. Did you contact anybody in California through those brokerage houses, or either of them, to try and get you U. S. 1 Emperor grapes?

A. Have they tried? Yes.

Q. I am asking you if you tried to get U. S. No. 1 grapes through either one of those three brokerage houses, that is, from California?

Plaintiffs' Exhibit No. 5—(Continued)

(Testimony of Joe Mosesman.)

A. Yes, sir.

Q. All right. Who did they contact in California between the 9th and the 15th of October, to try and get you U. S. No. 1 Emperor grapes? [117]

A. Roy Wright contacted Pacific Fruit.

Q. Do you have here any telegram to the Pacific Fruit between the 9th and the 15th of October, 1944?

A. Do I have in my possession?

Q. Yes.

A. No, sir, I do not.

Q. Did you ever see a telegram between those two dates?

A. Well, I think there are some here, yes.

Mr. Wackerbarth: Do you have any, counsel?

Mr. Hoppenstein: I think I have. I will see just exactly what we have.

Pacific Fruit (handing), Western Fruit Growers (handing), Heggeblade-Marguleas (handing).

Q. (By Mr. Wackerbarth): Who did Southwest Brokerage Company contact, to your knowledge, in an effort to get some California U. S. 1 red Emperor grapes?

A. I think his next shipment was Heggeblade-Marguleas. He probably tried several others, which I don't know for sure.

Q. Did he show you a telegram, that is, Southwest Brokerage, from Heggeblade-Marguleas?

A. I think he did.

Q. Now I want to show you a telegram which

Plaintiffs' Exhibit No. 5—(Continued)

(Testimony of Joe Mosesman.)

your counsel has offered. Is this the telegram which Southwest Brokerage showed you? [118]

A. Yes, sir.

Q. Do you know when this was shown to you?

A. Well, I can't remember the exact date.

Q. How long was it after you were informed that Red Lion would not ship these grapes? Within a month? A. Oh, no.

Q. Within three weeks?

A. No. You mean, when I start inquiring of getting any other grapes?

Q. Yes.

A. Possibly in—oh, say four or five days; a week.

Q. Do you know when this telegram came through. Did it come through within a week after you were notified? A. I don't remember that.

Q. Anyhow, this telegram states:

“Offer Sub Confirmation US One Emperor Shipment by December Tenth 325 FOB Plus Accrued Storage Charges Which Are Seven Cents for First Month and Five Cents Each Additional Month from Date of Storage Plus Loading and Gassing.”

So that you did know, then, that during the month of October, that you could buy U. S. 1 Emperor grapes for \$3.25 f.o.b. plus seven cents for the first month's storage, and five cents for each additional month, shipments to be by, on or about December 10th, didn't you?

Plaintiffs' Exhibit No. 5—(Continued)

(Testimony of Joe Mosesman.)

A. Yes, I know, but we was unable to get them, even [119] at that.

Q. What did you do about confirming this offer of Heggeblade-Marguleas?

A. I asked them to go and get it.

Q. Did they confirm an order to Heggeblade-Marguleas?

A. Did Heggeblade-Marguleas confirm the grapes to——

Q. Did Southwest Brokerage confirm this offer of Heggeblade-Marguleas?

A. Did Southwest Brokerage Company——

Q. Confirm this offer of Heggeblade and Marguleas to ship Emperor grapes by December 10th at \$3.25 f.o.b. plus accrued storage charges and loading and gassing?

A. Yes, sir.

Q. They did confirm that? Where is the copy of the telegram in which they confirmed this offer?

A. He did not confirm any, because we couldn't get them to confirm.

Q. All right. Here they offered them to you, didn't they, in this telegram?

A. That's right.

Q. What did you do about trying to——

A. I have told them to get them.

Q. All right. You told them to get them?

A. That's right.

Q. Did he telephone Heggeblade-Marguleas, or did he [120] wire them?

A. I don't know whether he phoned them or

Plaintiffs' Exhibit No. 5—(Continued)

(Testimony of Joe Mosesman.)

wired them or teletyped them, that I do not know. The fact remains, though, that he told me he tried to get the grapes, but they were sold out the following day when this telegram came in.

Q. Then, so far as you know, he did not wire Heggeblade-Marguleas to get these ten cars of red Emperors?

A. That I couldn't tell you, whether he wired them or not, or he teletyped them, or he phoned them.

Q. But he did tell you that when he contacted them, they had been sold? A. That's right.

Q. And he didn't tell you, when he contacted them, how long after it was that he had received this telegram that he contacted them, did he?

A. Well, possibly the following day or the day after, I suppose.

Q. Did he tell you how long it was?

A. Well, I don't remember exactly.

Q. Well, did he tell you?

A. Yes, he did tell me that he couldn't get them. That I do know.

Q. Did he tell you how long it was between the time of the receipt of this telegram and the time that he sought to confirm the offer? [121]

A. You mean, how much time——

Q. Elapsed, yes.

A. Elapsed? Well, I suppose it would be just guesswork now, I don't know.

Plaintiffs' Exhibit No. 5—(Continued)

(Testimony of Joe Mosesman.)

Q. If you don't know, say so.

A. Okay. [122]

* * *

Q. (By Mr. Wackerbarth): Then I am going to direct your attention to the telegram of October 30th from Western Fruit Growers to Bill Taylor, a broker at Dallas, Texas, dated October 30—that is 1944, isn't it—and they told you that good storage Emperors were now bringing \$3.50 f.o.b., but, "we are not selling any until after January 1st."

Did you or Mr. Margules make any effort to tie up 10 cars of them at that price?

A. Yes, we tried to, but they wouldn't sell them.

Q. They wouldn't sell them to you?

A. That's right.

Q. In other words, both of these companies here committed themselves, or offered to sell them, and when you went back to get them, you couldn't get them, is that it?

A. That's right.

Q. Did you telegraph Western Fruit Growers, or did Mr. Margules telegraph Western Fruit Growers?

A. No, I think Bill Taylor is the one that handled that.

Q. Did Bill Taylor telegraph Western Fruit Growers?

A. I think he did, yes. [123]

Q. Did you have a copy of the telegram?

A. No, sir.

Q. Did you ever see it?

A. No, sir.

Plaintiffs' Exhibit No. 5—(Continued)
(Testimony of Joe Mosesman.)

Q. Do you know how long it was after that, after he received this telegram, that he telegraphed them? A. I can't remember.

Q. I direct your attention to the telegram of November 20th, from the Pacific Fruit Exchange to Wright and Company. A. Yes, sir.

Q. Did you ask Wright and Company to try and get you some grapes? A. That's right.

Q. When did you ask them to try and get you grapes?

A. Well, after I found out I couldn't get them.

Q. As a matter of fact, didn't you wait until the approximate dates of the telegrams before you asked them to try and get you grapes?

A. Well—the approximate date?

Q. Yes.

A. Not until I found out I couldn't get grapes.

Q. In other words, you didn't wait from October 9, 1944, to November 20, 1944, to ask somebody to try and get you grapes?

A. I tried all along, since I found out I couldn't get [124] the grapes, various ones.

Q. You testified that you contacted Bill Taylor or Southwest Brokerage and Wright and Company?

A. That's right.

Q. The telegram of Pacific Fruit Exchange to Wright and Company is dated November 20, 1944. Did you wait from October 9th to November 20th before you took it up with Wright and Company?

A. Possibly I did.

Plaintiffs' Exhibit No. 5—(Continued)

(Testimony of Joe Mosesman.)

Q. Possibly you did? A. That's right.

Q. Your best recollection is that you did wait that long, isn't it?

A. Well, I am not positive. Possibly I did.

Q. What is your best recollection with reference to having Bill Taylor contact the Western Fruit Growers? Did you wait until October 30th for that? A. Well, yes.

Q. With reference to Southwest contacting Heggeblade-Marguleas, did you wait until October 24th for that, to have them contact them?

A. Yes, sir.

Q. With reference to this Pacific Fruit Exchange telegram, it says as follows:

"Storage Emperors Now Read for Distribution." [125]

"Read" means ready, doesn't it?

A. That's right.

Q. Do you want to look at this while I am reading it? A. Go right ahead.

Q. "Fiance." Do you know what that means?

A. No, sir.

Q. It seems to be a code. It seems to be broken down here so that it reads:

"Best Car Deal for One Car Is Three and a Half for US Ones Unclassified Touchdown or Other Label Equal Quality. Burdock Storage Gassing Handling and so Forth. Paid to December Fifth to Tenth Our Option but Storage and Transit Payable by Buyer If Applicable on Confirmation Forsake——"

Plaintiffs' Exhibit No. 5—(Continued)
(Testimony of Joe Mosesman.)

That is a code word, and apparently it means,
"You collect and remit."

Then it says, "Cobweb," which apparently is a
\$500.00 deposit on each car.

"We Will Draft It Usual Manner for the
Balance."

When you received that message on November
20th, what did you do about getting those 10 cars
of red Emperor grapes?

A. We stepped in to buy the following day, and
they were sold.

Q. What else did you do after you found that
these folks had sold out everything immediately
after they made their offers to you? [126]

A. Stayed without grapes.

Q. You did without grapes, and that is all that
you did, is what you have testified to here, as far
as getting grapes?

A. That's right.

Mr. Wackerbarth: That is all.

Cross-Examination

By Mr. Aynesworth:

Q. Mr. Mosesman, when you signed that, you
expected in some way to be notified of the condition
of the grapes on inspection, didn't you?

A. Yes.

Q. Then, did you expect those inspection certifi-
cates to be forwarded to you for observation?

A. No, sir.

Plaintiffs' Exhibit No. 5—(Continued)
(Testimony of Joe Mosesman.)

Q. In what way were you to find out as to whether or not the inspection certificates were sufficient?

A. Well, customarily they mail them.

Q. Then you expected them to be mailed to you, is that right? A. That's right.

Q. And you understood then that you were to have those mailed to you, and, upon their receipt, if they showed U. S. No. 1, then you would remit?

A. Yes, sir.

Q. And you would remit by a sight draft on one of the [127] banks, is that right? A. Yes, sir.

Q. This instrument you are looking at, when it uses the expression "draft" there, West Texas to First National Bank, Fort Worth, draft, Central Fruit to Mercantile Bank, Dallas, you meant to use that method of making payment on the deposit as well as the final payment, is that right?

A. Yes, sir.

Q. And Mr. Margules, the agent there, was the man you dealt with, the local broker, is that right?

A. Yes, sir.

Q. And he explained to you that that was the method that you would use in making payment, did he?

A. Well, the method of making payment is—I was supposed to pay for the entire amount of the grapes.

Q. You were to pay for them at two different

Plaintiffs' Exhibit No. 5—(Continued)

(Testimony of Joe Mosesman.)

times, but you were to use the sight draft method of doing it, is that right?

A. Well, I don't remember exactly the method of paying them. All I do remember is that we were supposed to have advanced \$1,000.00 a car on each car, and then draw the difference for the balance as we ordered them out.

Q. Then you expected to send that \$1,000.00 deposit as soon as you received the certificate of inspection, is that right? [128]

A. Yes, sir.

Q. In view of the fact that this agreement here, which is attached as a part of the pleading as Exhibit 2 on the complaint—I notice that that is made with Associated Fruit Distributors, and so forth—it was your understanding, was it not, that you were to send that money, the initial deposit, and so forth, to the Associated Fruit Distributors?

A. Yes, sir.

Q. And then depend upon them to transmit it—if the Red Lion were the people supplying you with the grapes, that they would transmit it in turn to the Red Lion Packing Company?

A. Yes, sir.

Q. You of course regarded Mr. Crane, that is, the Associated Fruit Distributors, as acting for you and as your employee in procuring this fruit for you, didn't you?

A. Well, yes.

Q. And he and the Southwest Brokerage Company were both acting for you in trying to procure grapes, were they not?

A. That's right.

Q. Mr. Mosesman, when these various telegrams

Plaintiffs' Exhibit No. 5—(Continued)

(Testimony of Joe Mosesman.)

were read to you, having the code words in them, I believe you did not personally understand the meaning of the various code words, did you?

A. Well, generally they translate them before they bring the wire up to the office, or they telephone me that car so-and-so has been [129] confirmed.

Q. Just let me get at this, please.

You personally did not know how to interpret those code words, did you?

A. Not looking at them, no, sir.

Q. When counsel was questioning you a moment ago about those words, you do not remember that Mr. Margules at any time translated those words to you? That is, you have no distinct recollection of it now, do you?

A. That's right.

Mr. Hoppenstein: What do you mean by "That's right"?

The Witness: Yes, sir.

Q. (By Mr. Aynesworth): In other words, by "That's right," you mean that you do not now remember his interpreting them?

A. That's right.

Q. I will reframe the question.

As I understand you now, you do not have any definite recollection that Mr. Margules at any time translated any of those code words to you, as you sit here now?

A. Oh, yes. He does translate code words when he brings the wire into the office.

Plaintiffs' Exhibit No. 5—(Continued)
(Testimony of Joe Mosesman.)

Q. Did you go to his office to see these telegrams, or did he come to your office? What is your recollection?

A. Well, he comes to my office.

Q. Are you sure he did in all these cases? [130]

A. Always.

Q. You never went to his office, then?

A. No, sir.

Q. Except as to the telegrams you saw, all your testimony with respect to Mr. Margules in connection with the Associated Fruit Distributors, is purely hearsay, isn't it?

Mr. Hoppenstein: Ask him if he knows what hearsay is.

Q. (By Mr. Aynesworth): In other words, it is just what Mr. Margules or someone told you, isn't it?

A. Well, no. He showed me wires.

Q. No. I say, aside from the wires that he showed you, your testimony with respect to this matter is purely hearsay, just what someone else told you, is that right?

A. Well, I can't understand exactly what you mean.

Q. Have you ever seen Mr. Crane?

A. No, sir.

Q. You don't know him? A. No, sir.

Q. And you had no telephone conversations with him? A. No, sir.

Plaintiffs' Exhibit No. 5—(Continued)

(Testimony of Joe Mosesman.)

Q. You did not have any teletype messages from him, or didn't send any to him?

A. No, sir.

Q. You personally did not have any control over or direction [131] of Mr. Crane in this matter, did you?

A. No, sir.

Q. You of course are in no wise related to Mr. Margules?

A. No, sir.

Q. And you are not in any wise related to these people whom you speak of as your associates or partners?

A. No, sir.

Q. Other than just business associates?

A. Yes, sir.

Mr. Aynesworth: I think that is all.

Examiner Griffin: Are there any further questions of the witness?

Cross-Examination

By Mr. Wackerbarth:

Q. Mr. Aynesworth asked you as to whether or not you regarded Crane as acting for you, and you said that you did. That was your statement, wasn't it?

A. Yes, sir.

Q. And that was correct, wasn't it? Your statement was correct, wasn't it?

A. Yes, sir.

Q. Then was it your understanding that you were to pay Crane this \$1,000.00, and he was to send it on to Red Lion for you? That is what you understood he was to do, wasn't it?

A. Yes. [132]

Plaintiffs' Exhibit No. 5—(Continued)
(Testimony of Joe Mosesman.)

Mr. Wackerbarth: Okay. That is all.

Redirect Examination

By Mr. Hoppenstein:

Q. About October 9, 1944, when you discovered that Red Lion wasn't going to ship the 10 cars to you, what did you do immediately with reference to contacting brokers to buy your additional grapes, or what did you do?

A. I have tried to get those brokers that I mentioned to replace those 10 cars of grapes immediately.

Q. How often would you see these brokers to tell them to get these grapes for you?

A. Every day.

Q. When they received wires quoting prices on grapes and the three wires mentioned just a moment ago, state whether or not you would authorize the broker to buy the grapes at those prices?

A. They were authorized to buy.

Q. Up to how many?

A. Up to 10 cars.

Q. And you were able to buy two cars, I believe, yourself? A. That's right, yes, sir.

Q. And West Texas, through their brokers, were able to buy a certain number of cars themselves?

A. Yes, sir.

Q. Of your own knowledge, do you know whether or not [133] West Texas was making efforts,

Plaintiffs' Exhibit No. 5—(Continued)

(Testimony of Joe Mosesman.)

through their brokers, to try to obtain additional cars of grapes from October 10th through the balance of October, 1944?

A. Well, I suppose they did. I guess they tried as hard as I did.

Q. Did you see any of the wires that they received from their brokers?

A. I can't remember exactly. I don't remember seeing any of them. It was only over a telephone conversation that they possibly told me that they have tried it.

Q. State whether or not you would have bought 10 cars of grapes if you were able to buy them?

A. Yes, sir, I would.

Q. Isn't it a fact that during this period, from October, 1944—

Mr. Wackerbarth: You wouldn't by any means lead the witness, would you, counsel?

Mr. Hoppenstein: All right. I will try to re-frame my question. We are rather informal here.

Q. (By Mr. Hoppenstein): Do you know of your own knowledge whether or not any of the shippers wired back whether or not they were able to furnish any crates under your acceptances, direct to you? Did you receive any direct wires?

A. Direct wires from—no, sir. [134]

Q. Are you acquainted with these particular brokers, Mr. Wright and Mr. Taylor and Southwest Brokerage?

A. I know them well.

Plaintiffs' Exhibit No. 5—(Continued)

(Testimony of Joe Mosesman.)

Q. Would they report to you from day to day as to what results they were having?

A. Yes, sir.

Q. State from whom you expected to receive the delivery of the 10 cars of grapes?

A. Well, as far as——

Mr. Wackerbarth: Object to it as calling for a conclusion of the witness.

The Witness: Associated Fruit Company.

Q. (By Mr. Hoppenstein): State whether or not you considered them a seller to you.

A. Yes, sir.

Mr. Wackerbarth: Object as calling for a conclusion of the witness.

Examiner Griffin: Let us rule on these objections.

I think the witness may answer, anyway.

Q. (By Mr. Hoppenstein): What was your understanding with reference to your method of sending the \$1,000.00 upon the obtaining of government U. S. No. 1 inspection? How were you to make that \$1,000.00 payment? [135]

A. That was supposed to be given to the Southwest Brokerage Company, and they were supposed to mail it in to—what is the name of that concern?

Mr. Wackerbarth: Red Lion, or Associated?

The Witness: No, Associated.

Q. (By Mr. Hoppenstein): Who was to notify

Plaintiffs' Exhibit No. 5—(Continued)

(Testimony of Joe Mosesman.)

you when U. S. No. 1 inspection certificates were obtained?

A. Southwest Brokerage Company.

Q. Had you had any prior dealings with Mr. Crane or the Associated before this transaction?

A. Yes. [136]

* * *

Q. (By Mr. Hoppenstein): Did you consider the Associated Fruit an employee of yours or of Red Lion? [138]

* * *

The Witness: An employee of mine or the Red Lion? Is that the question?

Q. (By Mr. Hoppenstein): That's right.

A. Well, I considered them as an employee of Red Lion.

Q. You were agreeing, however, to pay them \$500.00 for their services in connection with this transaction?

A. That's right.

Q. Associated was never relying on your payroll, were they?

A. No, sir.

Q. Prior to this transaction, had you ever paid them any fee?

A. No, sir.

Q. State whether or not you were looking to Associated [139] to obtain delivery of the 10 cars of grapes to you?

A. Yes, sir.

Mr. Hoppenstein: That is all.

Plaintiffs' Exhibit No. 5—(Continued)
(Testimony of Joe Mosesman.)

Recross-Examination

By Mr. Wackerbarth:

Q. What were you going to pay them \$500.00 a car for? A. That was their terms.

Q. I know, but you were going to pay it to Associated, weren't you? A. That's right.

Q. What for?

A. To secure the grapes, I suppose.

Q. And you wanted them to get them from whomever they could, didn't you?

A. Well, to me it wouldn't make any difference.

Q. As long as they got you grapes, they could get them from anybody they could get them from, couldn't they? A. Yes, sir.

Q. And, for their services in getting these grapes, you were going to pay Associated \$500.00 a car? A. On that deal I was, yes, sir.

Q. And you were perfectly willing to pay them for getting these grapes for you? A. Yes, sir.

Mr. Wackerbarth: All right. [140]

Mr. Aynesworth: Just one further question.

Recross-Examination

By Mr. Aynesworth:

Q. At the time that Mr. Margules mentioned to you that he had discussed with the Associated Fruit Distributors the matter of procuring Emperors for you, you had never heard of the Red Lion Packing Company, had you? A. No, sir.

Plaintiffs' Exhibit No. 5—(Continued)

(Testimony of Joe Mosesman.)

Q. And at the time you were called in and shown this particular confirmatory contract, so to speak, up to that moment, you had never heard of the Red Lion Packing Company, had you? A. No, sir.

Q. At the time that you were called in to approve that, you knew that the Associated Fruit Distributors had expected you to pay them for their service in procuring these Emperors, didn't you?

A. Yes, sir.

Q. And you had at that time investigated and inquired of Margules if it was legal for you to so use their services and pay for them, didn't you?

A. Yes, sir.

Q. And were told that it was proper, weren't you? A. Yes, I thought so, yes.

Q. And you thought at that time, when you were paying [141] them that \$500.00, that they were rendering a service to you in procuring the Emperors, didn't you? A. Yes, sir.

Q. And you in that way considered them your agents in procuring grapes for you, didn't you?

A. Yes, sir.

Mr. Aynesworth: That is all.

Examiner Griffin: Are there any further questions of the witness?

Mr. Hoppenstein: That is all.

Examiner Griffin: You are excused.

(Witness excused.) [142]

Plaintiffs' Exhibit No. 5—(Continued)

JAMES P. COYN

a witness recalled on behalf of the respondent, Associated Fruit Distributors of California, having been previously duly sworn, was examined and testified further as follows:

Direct Examination

By Mr. Wackerbarth:

Q. Mr. Coyn, you have heretofore been sworn and testified that you were the traffic dispatcher for the—— A. Traffic manager.

Q. Traffic manager. As such, you have custody of the files of the Associated Fruit Distributors?

A. That's right.

Q. And you have familiarized yourself with the files in connection with this transaction?

A. I have, yes.

Q. I want you to take the report of the investigating officer for the Department here, and examine the telegram which is set forth as Exhibit 13-A.

A. I have read the telegram.

Q. Was that a telegram that was directed to the Southwest Brokerage Company alone, or to other institutions? If you desire to use your records to determine that answer, you may. I will hand them to you.

A. That is a telegram that was directed—what we term a “book wire”—the same telegram goes to a number of receivers. [149]

Q. How many was that sent to?

Plaintiffs' Exhibit No. 5—(Continued)

(Testimony of James P. Coyn.)

A. Thirteen.

Q. Then I will ask you whether or not the Associated received any response from Southwest Brokerage Company, and, if so, state what the response was. Just answer yes or no.

A. Yes, we did.

Q. What was that response?

A. A teletype conversation the following day.

Q. With whom?

A. With Southwest Brokerage.

Q. What was the substance of that teletype conversation, so far as this telegram is concerned?

A. Southwest said:

“Referring Quotation On Nine Cars US One and Nine Unclassified Emperors Do We Have to Buy All of Them or Can We Get Someone. Buy Possible Couple of Each. Go Ahead.”

We replied:

“Believe We Could Work a Deal on Block of Two Three——”

Q. Two-three each? A. Two-three each.

“Submit It and Will See If Can Work Out.”

Q. Now I will ask you whether or not, subsequent to that teletype conversation, was another telegram sent out by Crane or Associated Fruit Distributors?

A. The second telegram was sent. [150]

Mr. Aynesworth: Would you mind stating the date?

Mr. Wackerbarth: I am going to. I just asked the question.

Plaintiffs' Exhibit No. 5—(Continued)
(Testimony of James P. Coyn.)

Q. (By Mr. Wackerbarth): Was there another one? A. On October 2nd.

Q. Now look at this telegram, which is Exhibit 13-B. I will ask you whether or not that telegram was sent out on October 2nd?

A. It was sent on October 2nd.

Q. And that was sent to some 13 brokerage houses? A. 13 houses, that is correct.

Q. That has a code word in that telegram. Would you please read the telegram, interpreting the code?

A. "Referring to Our Night Letter of 26 Quoting Futures Emperors Secured Revised Deal Fifteen Cars Usone 2.50 Net Same Deal. Wire Quick if Wanted Any Part."

Q. And that was the book wire that was sent to some 13 brokers? A. Yes, sir.

Examiner Griffin: What was the date of that, please?

The Witness: October 2nd.

Q. (By Mr. Wackerbarth): What time was that sent out on the 2nd of October?

A. 9:10 a.m.

Q. That was in the morning. Now I will ask you whether [151] or not subsequent to that being sent out at 9:10 a.m. on October 2nd, did you talk over the teletype with Southwest Brokerage?

A. Yes, we did.

Q. Will you please state the substance of that teletype conversation?

Plaintiffs' Exhibit No. 5—(Continued)

(Testimony of James P. Coyn.)

A. Southwest Brokerage called us on the teletype. He said:

“Referring the Six Emperors Fort Worth and Four Dallas Deal Okay 2.50 Net. 50.00 for You if Legal. Presume It Is Legal or You Wouldn't Offer It. Advise Go Ahead.”

Q. Did you advise? A. We replied:

“Haven't Been Able Contact the Shipper Yet but Sure It Is Okay. Will Wire You Definitely One Way or Other Soons Get Them. Yes, It Is Legal Naturally. The Receiver Can Pay His Whole Markup for Buying Brokerage if He Wants to. Will Wire You Soons Receive Definite Confirmation. Understand His Basis Thousand Dollar Deposit Against Each Usone Inspection as They Are Loaded. What Else New. Go Ahead.”

To which he replied:

“As Far as I Know That Covers It. Try Wire Night Sure.”

Q. After this teletype, do you know whether or not Mr. Crane or the Associated sent another teletype or telegram to the Southwest Brokerage? [152]

A. We did, yes.

Q. At what time did you send this other telegram? Was it a telegram or teletype?

A. Telegram.

Plaintiffs' Exhibit No. 5—(Continued)

(Testimony of James P. Coyn.)

Q. What time did you send it?

A. We sent it 5:25 p.m., October 2nd.

Q. Is that the telegram which is attached to the complaint as Exhibit 1?

A. Yes, that's the same one.

Q. That Exhibit 1 shows the telegram as received by the Southwest Brokerage Company, does it?

A. Yes, that is a photostat copy of the telegram received at that end.

Q. And if that telegram was sent out at 5:25 p.m. on October 2nd, can you state whether or not these figures down here signify that it was received at Southwest Brokerage or at Dallas, Texas, at 8:24 a.m.?

A. Well, it was sent as a night message.

Q. At 5:25?

A. At 5:25 p.m. And, the time at the bottom of the message on the received copy is ordinarily the time the message is received.

Q. That is, received at the Dallas office of the Western Union, is that correct?

A. Yes, that's correct. [153]

Q. Now I will ask you whether or not, on the 3rd of October, any telegrams or teletypes passed between Associated and Southwest?

A. On October 3rd—

Q. Answer yes or no. A. Yes.

Q. All right. What telegram was sent to Southwest, if any?

Plaintiffs' Exhibit No. 5—(Continued)

(Testimony of James P. Coyn.)

A. A telegram was sent on October 3rd.

Q. At what time?

A. At 10:10 a.m., and it says:

“Did You Sell.”

Q. I want to show you this telegram, before you go further.

Is that the same telegram that is referred to as Exhibit 13-D, having been received at Dallas, Texas, at 10:16 a.m.?

A. That's the same wire, yes.

Q. Now I will ask you whether or not, in response to that telegram, did you receive a telegram from the Southwest Brokerage Company?

A. Yes, we did.

Q. I show you here Exhibit 13-E, attached to the investigator's report, and ask you if that is the telegram which you received back from them?

A. Yes, that's the same telegram. [154]

Q. What time did you receive back the telegram designated Exhibit 13-E?

A. 11:31 a.m.

Q. On the 3rd of October?

A. On the 3rd of October.

Q. Up to that point of time, had you received the so-called “standard memorandum of sale” and the confirmation by Margules?

A. No, we had not.

Q. Do you know how they received that, by mail, or how?

A. Well, of my own knowledge I don't know, but it would have to be by mail, either ordinary or airmail.

Plaintiffs' Exhibit No. 5—(Continued)
(Testimony of James P. Coyn.)

Q. Is that the customary method?

A. That is customary.

Q. Have you testified to all of the messages and teletypes that passed between Southwest and Associated, to the best of your ability?

A. Yes, sir, I have.

Q. And there are no others that you know of?

A. No, there are none.

Q. Other than what you have testified to here?

A. No others.

Mr. Wackerbarth: Take the witness.

Mr. Aynesworth: No questions.

Mr. Hoppenstein: I believe I have one. [155]

Cross-Examination

By Mr. Hoppenstein:

Q. Mr. Coyn, weren't there some other telegrams sent from Associated to Southwest Brokerage, and from Southwest Brokerage to Associated, on October 9th, 10th?

A. They are all in the record, yes.

Q. Weren't these telegrams that you are talking about in the record, too?

A. Some of them were; some of them were not.

Q. The telegrams that are in the record, known as Exhibits 13-M, 13-O, 13-P—

Mr. Wackerbarth: Just a minute. Let the witness check them, will you please, counsel?

Mr. Hoppenstein: Surely.

Plaintiffs' Exhibit No. 5—(Continued)

(Testimony of James P. Coyn.)

Examiner Griffin: In order that the record may be clear, I wish it to show that the exhibit numbers that are being referred to here by both counsel are those numbers appearing on the photostatic copies of these exhibits which are attached to the investigator's report, as distinguished from the exhibit numbers that have been given to the documents at this hearing.

Mr. Wackerbarth: I might say, counsel, we do not question but what, commencing October 9th, another series of telegrams passed. I was only trying to identify the telegrams leadings up to this standard confirmation. We concede the other [156] telegrams as outlined there did pass.

Mr. Hoppenstein: It is stipulated that they did pass in the regular course of business?

Mr. Wackerbarth: That is correct.

Q. (By Mr. Hoppenstein): I would like to direct your attention, please, sir, to the telegram that is marked Exhibit 13-R. Do you know what date that telegram was sent to Southwest Brokerage?

A. Looking at this photostat copy, I can't determine the month.

Q. Would you have a copy in your office files, that are under your supervision?

Mr. Wackerbarth: That has not been furnished me.

Q. (By Mr. Hoppenstein): Would you gather that it was October 16, 1944?

Plaintiffs' Exhibit No. 5—(Continued)

(Testimony of James P. Coyn.)

A. Connecting it up with the other wires, I would say yes.

Q. In that telegram, Associated wired Southwest Brokerage, did they not:

“Again Talked Red Lion. They State Definitely Unwilling Abide Any Sales Made Where Ceiling Definite. Consideration. Furthermore Crops Short. Not Packing Usone Grade”——

And you have a code word “Duqua,” which seems to be translated here, “looks like.”

A. That's right.

Q. “Case for Courts Decide Since Ceiling Taken Off [157] Unexpectedly. Nobody Knows Whether or Not Such Deal Enforceable. Offer Suggestion You Take Whatever Action Deemed Advisable.”

That telegram was sent in the regular course of business by Associated, was it not?

A. Yes, sir.

Q. And, as a matter of fact, that was the date that Associated notified Southwestern that Red Lion definitely would not ship the 10 cars of grapes, isn't that correct?

A. They made some counter offers prior to that time.

Q. Those counter offers were in connection with grapes that were not graded U. S. No. 1 with government inspection, isn't that true?

Plaintiffs' Exhibit No. 5—(Continued)

(Testimony of James P. Coyn.)

A. That's right.

Examiner Griffin: The witness did not answer the former question. I would like to have an answer, for my own information.

(The record was read.)

The Witness: That was the date on which they were told definitely that shipment would not be made.

Mr. Hoppenstein: October 16, 1944?

The Witness: That is right.

Mr. Hoppenstein: That is all.

Examiner Griffin: Are there any further questions of the witness? [158]

Cross-Examination

By Mr. Moradian:

Q. Mr. Coyn, what is the function or what is the purpose of the standard memorandum of sale?

A. The purpose or the function of it?

Q. Yes, what is it for?

A. Well, as I understand, it is a confirmation that goes to both parties to a transaction, both buyer and seller.

Q. That is required by the regulations of the Department of Agriculture, is it?

A. It is not an absolute requirement, I don't believe, but it is certainly a nice thing to have.

Q. Is it customary, before a contract is con-

Plaintiffs' Exhibit No. 5—(Continued)

(Testimony of James P. Coyn.)

cluded, to have one of those issued and turned over to each seller? A. No.

Q. Buyer?

A. No, there are a number of cases where it isn't done. We sell any number of cars where we never get a written confirmation of sale in this form.

Q. However, when one of those is issued by a broker, a copy of it is supposed to go to the seller, isn't it? A. That's correct.

Q. And, so far as you know, there was never a copy of that sent to the Red Lion Packing Company, is that right?

A. I don't know whether there was or not. [159]
Mr. Moradian: That is all.

Cross-Examination

By Mr. Hoppenstein:

Q. That memorandum correctly reflected the understanding between Associated and Southwest Brokerage, did it not?

* * *

The Witness: I don't know.

Q. (By Mr. Hoppenstein): You receive these contracts and keep them in your files under your supervision, do you not?

A. As a general thing, yes.

Q. They come to your desk, don't they?

A. That's right.

Plaintiffs' Exhibit No. 5—(Continued)

(Testimony of James P. Coyn.)

Q. When they arrive, you submit them to Mr. Crane, [160] do you not? A. No.

Q. Don't you check with him at all?

A. No.

Q. Did you raise any question with reference to the phraseology contained in that memorandum agreement? A. No, sir.

Q. As far as you know, was this agreement satisfactory to Associated?

* * *

The Witness: I don't know. These confirmations of sale that are made on a future deal don't come to me. They come to the sales department. A confirmation of sale that is made on a particular car comes to me, and I check it against the terms of sale, as designated on our sales card, but, in a case of this kind, where it is predicated on a future sale, then the confirmation does not come directly to me; it goes through the sales department. [161]

Q. (By Mr. Hoppenstein): In your investigation of the records of your office, the Associated, state whether or not you checked this memorandum against any records that you had in your files.

A. Yes, I did.

* * *

Q. I will ask you whether or not you found among any of the records of the Associated any discrepancy in the terms [162] of that line in that memorandum of agreement with Southwestern?

* * *

Plaintiffs' Exhibit No. 5—(Continued)
(Testimony of James P. Coyn.)

The Witness: No, I didn't find any discrepancies.

Q. (By Mr. Hoppenstein): Did you find any memoranda or copies of wires, telegrams or teletypes, to Associated, advising them that that memorandum of agreement was not satisfactory? [163]

* * *

The Witness: No, I didn't find anything in the file.

Mr. Hoppenstein: That is all.

Mr. Wackerbarth: That is all.

Cross-Examination

By Mr. Aynesworth:

Q. You didn't find anything in that agreement there, or anything in the records that in any way showed that Associated Fruit Distributors was an agent of the Red Lion Packing Company, did you?

A. No, I did not. [164]

* * *

Q. Did you find anything in Mr. Crane's records that would show that he was not an employee of the buyers? A. That he was not?

Q. Yes. A. No, I did not.

* * *

Q. As I noted in the telegram from Associated Fruit Distributors of California to Red Lion Pack-

Plaintiffs' Exhibit No. 5—(Continued)

(Testimony of James P. Coyn.)

ing Company, the telegram terminates in this expression:

“Will Forward Confirmation for Your Signature Soons Received Airmail From Buyers.”

Is it your understanding from that, before that contract was consummated, the Red Lion Packing Company would be forwarded a contract to sign, and would sign it, is that right?

A. No, I have no such understanding at [166] all

Q. What does that mean?

A. Well, contracts are consummated before the——

Q. Wait a minute. I read it to you. Notice the reading of it. It concludes with this:

“Will Forward Confirmation for Your Signature Soons Received Airmail From Buyers.”

Was it sought by that, that he was to have a contract and sign it in order to make that a binding obligation?

A. No, that wouldn't be my understanding at all.

Q. What was the purpose of putting that in the telegram? Do you know anything about why it was put in there?

A. He would be entitled to get a copy of the memorandum of sale.

Q. Why send it to him and tell him it was for his signature if he wasn't to have that as a part of the negotiation?

Plaintiffs' Exhibit No. 5—(Continued)
(Testimony of James P. Coyn.)

A. Most of these sales, the negotiation is completed long before the receipt of the memorandum of sale. The memorandum of sale only requires the signature of the broker. It is not signed by the buyer or seller. A standard confirmation, but not a standard memorandum.

Q. Why did Mr. Crane send that to Red Lion for their signature?

A. Mr. Crane would have to answer that. I don't know.

Q. In other words, you don't know whether or not he [167] considered that as the necessary step in order to consummate the sale or not, do you?

A. It is not a necessary step.

Q. You didn't get my question. You don't know whether or not, in the particular instance, Mr. Crane regarded that as necessary in order to get a confirmation of the sale, do you?

A. Well, I don't know what was in Mr. Crane's mind, no.

* * *

Cross-Examination

By Mr. Hoppenstein:

* * *

Q. You did find in your files a copy of a telegram from Associated to Southwestern advising that Red Lion had confirmed the sale of the 10 cars, did you not?

Plaintiffs' Exhibit No. 5—(Continued)

(Testimony of James P. Coyn.)

Mr. Wackerbarth: That is conceded in the record. Nobody questions it.

Q. (By Mr. Hoppenstein): The telegram advising that confirmation had been obtained from Red Lion, which is dated October 2nd and marked Exhibit 1 on the complaint, was sent out, I believe, according to your testimony, by a night letter, after 5:00 o'clock on October 2nd. That is correct, isn't it?

A. That's correct.

Q. And was not received in Dallas until the morning of October 3rd. That is correct, isn't it?

A. That's correct.

Mr. Wackerbarth: It says on the telegram that it was received at 8:24 a.m. on the 3rd.

Q. (By Mr. Hoppenstein): And the memorandum agreement is dated the 3rd of October, 1944, is it not?

Mr. Wackerbarth: It is. We stipulate it is.

Q. (By Mr. Hoppenstein): And the wire to Red Lion, advising that the 10 cars had been sold, was dated October 3rd, 1944, was it not? [169]

A. That's right.

Mr. Hoppenstein: That is all.

Q. (By Mr. Moradian): And the telegram in reply, from Red Lion, was dated October 4th, was it not?

Mr. Wackerbarth: That is conceded, also. [170]

Plaintiffs' Exhibit No. 5—(Continued)

DEPOSITION OF RAYMOND M. CRANE

taken on behalf of the complainants, at 405 William Fox Building, Los Angeles, California, at the hour of 3:00 o'clock p.m., on Tuesday, the 10th day of September, 1946, before Phillip W. Silver, Notary Public in and for the County of Los Angeles, State of California.

Appearances:

Commissioner:

PHILLIP W. SILVER,
405 Wm. Fox Bldg.,
Los Angeles Calif.

For Associated Fruit Distributors of California:

HENRY O. WACKERBARTH,
601 Fay Building,
Los Angeles, Calif.

Mr. Silver: Will you please show in the record that the parties present in this proceeding, in addition to Mr. Crane, Mr. Wackerbarth, and myself, was a gentleman here whose name is Coyne, who is with the Associated Fruit Distributors of California as Traffic Manager?

Are you representing Red Lion Packing Company here.

Mr. Wackerbarth: No.

Mr. Silver: Let the record show there is no ap-

Plaintiffs' Exhibit No. 5—(Continued)

(Deposition of Raymond M. Crane.)

pearance being made here for the Red Lion Packing Company.

Also show that this deposition is taken pursuant to a commission that was issued in an order that was made in this case and which was sent to me, scheduling the deposition for the 21st day of August, 1946, at the hour of 2:00 p.m., but that pursuant to stipulation entered into between Mr. Wackerbarth and myself, concurred in by Mr. Crane, this deposition was continued to this date and this hour. Is that correct, Mr. Wackerbarth?

Mr. Wackerbarth: Yes. Mr. Crane was out of the County at that time.

RAYMOND M. CRANE

produced as a witness on behalf of the complainants, pursuant to a commission issued in an order in this case, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Silver:

Q. Please state your name, address and business.

A. Raymond M. Crane. You want my business address?

Q. Yes.

A. 1231 East 7th Street, Los Angeles.

Q. What is your residence address?

Plaintiffs' Exhibit No. 5—(Continued)
(Deposition of Raymond M. Crane.)

A. 1725 El Molino, San Marino.

Q. What is your business?

A. Produce broker and distributor.

Q. What is your connection with the Associated Fruit Distributors, of Los Angeles, California?

A. Owner.

Q. During October, 1944, state whether or not you had any business transactions with Jay Margules, and the Red Lion Packing Company, Exeter, California, in connection with ten cars of United States No. 1 Emperor grapes. [3*]

A. Yes, I did.

Q. Please state in detail the dealings that you had with this transaction on or about October 2nd and 3rd, 1944, and thereafter.

A. We notified Margules of a tentative deal on some Emperor grapes and quoted him a price and stated that we thought we could get these grapes as a procuror, thought we could buy the grapes before the Red Lion Packing Company at a price, and we were to charge them \$50.00 per car to procure them. I told them we could charge the \$50.00 a car procurement or service charge for services rendered in buying the grapes from the principal.

Q. Have you answered the question in full? It said, "Please state in detail the dealings that you had with this transaction on or about October 2nd and 3rd, 1944, and thereafter."

A. Well, that was the beginning of the deal. You

Plaintiffs' Exhibit No. 5—(Continued)

(Deposition of Raymond M. Crane.)

mean the whole, specific transaction involved in the case?

Q. That is what the question means to me.

Mr. Wackerbarth: I don't want to interrupt the witness but I think I can be of help if I just tell him to mention the telegram.

The Witness: Well, I would like to put in the record the telegram of the offering, and the whole deal is right in the record as to what it was.

Mr. Silver: Maybe we will come back to that [4] question since the succeeding question mentions the telegram.

Isn't it a fact that by wire to Southwest Brokerage Company, Jay Margules, at Dallas, Texas, signed, "Associated Fruit Distributors of California," you wired as follows:

"Secured Red Lyon Packing Company Confirmation Ten Cars Grapes as Outlined You Collect Deposits to Be Forwarded to Us Soons DUPJA Wired Each Car."

A. That is correct.

Mr. Wackerbarth: Can I interrupt again? You still haven't got the story, because there are several telegrams in these proceedings, they are all in the record. The Department of Agriculture has them but you can go into it if you want to. I have copies of them. If you don't want to go into it, don't do it.

Mr. Silver: Here is what I will do: I know

Plaintiffs' Exhibit No. 5—(Continued)

(Deposition of Raymond M. Crane.)

nothing about this case except what is set forth in these questions which I have been asked to read to you and have you reply to them. Of course, I want to be sure that I comply with my instructions and get all of your story so that we won't have to retake part of your deposition later on. I will go through the whole deposition, put all the questions to you in these written interrogatories and when I finish, if there is any material information that has not been covered, then I will propound an [5] extra question to you and have you present that so I will be sure they get all the information they want.

Is that satisfactory, Mr. Wackerbarth?

Mr. Wackerbarth: Yes.

Q. (By Mr. Silver): Please state from whom and how you received the confirmation for the sale of said ten cars concerning which you wired Southwest Brokerage Company that you had received confirmation.

A. By telephone and telegram, written to Red Lion Packing Company.

Q. The question asks, "from whom."

A. From John Kazanjian.

Q. With whom did you deal and talk to connected with Red Lion Packing Company in regard to the transaction involving the ten cars of Emperor grapes confirmed to Southwest Brokerage Company?

A. John Kazanjian.

Q. State whether or not the confirmation that

Plaintiffs' Exhibit No. 5—(Continued)

(Deposition of Raymond M. Crane.)

you received from Red Lion Packing Company, that you wired Southwest Brokerage Company, was in the regular course of your business dealings with Red Lion Packing Company and Southwest Brokerage Company, at Dallas. A. Yes.

Q. State whether or not you received your confirmation from Red Lion in writing or if the same was verbal and, if verbal, how and with whom you talked. [6]

A. Received it in a telegram and it was signed, "Red Lion Packing Company," as I recall.

Q. State whether or not Red Lion Packing Company, in the regular course of its business dealings, in connection with the ten cars of United States No. 1 Emperor grapes, authorized and empowered you to consummate the sale of the grapes to Southwest Brokerage Company, at Dallas, Texas.

A. I don't think that question is quite right. They didn't empower me. They confirmed for the account of the buyer. They did confirm the sale, however, confirmed the transaction by wire.

Q. State whether or not you would have wired confirmation to Southwest Brokerage Company if you had not received authorization from Red Lion Packing Company. A. No, sir.

Q. When did you first learn that Red Lion Packing Company refused to carry out its contract and make delivery?

A. When was that? I don't recall the exact date. I would say about October 9th.

Plaintiffs' Exhibit No. 5—(Continued)
(Deposition of Raymond M. Crane.)

Q. What year? A. 1944.

Q. Isn't it a fact that Associated Fruit Distributors of California wired Southwest Brokerage Company, at Dallas, Texas, on or about October 12, 1944, as [7] follows:

"As Final Gesture and Endeavoring to Amicably Settle Grape Contract Red Lion Packing Company Willing Sell Basis 3.00 Net FOB Quantities Specified on Contract Buyer to Pay Us .10 Pkge Procurement Quality Is Nice Uninspected Fieldrun but Red Lion States in All Probability Fruit Easily Grade Usone Arrival but Not Willing Make This Guarantee Our Inspector Has Seen Fruit Says Really Beautiful if Buyers Wish We Will Arrange to Put Cars Storage Which We Have Already Under Contract Otherwise Red Lion Takes Attitude That After All He Had Nothing to Do With Ceiling Feels He Relieved All Moral Responsibility by Making This Offer Claims Turning Down Offers His Entire Outfit Today Basis 3.40 Cash FOB."

A. Right.

Q. Isn't it a fact that Associated Fruit Distributors of California wired Southwest Brokerage Company, at Dallas, after October 12, 1944, as follows:

"Again Talked Red Lion. They State Definitely Unwilling Abide Any Sales Made Where

Plaintiffs' Exhibit No. 5—(Continued)

(Deposition of Raymond M. Crane.)

Ceiling Definite Consideration. Furthermore, Crop Short, Not Packing Usone Grade DUQUK. Case for Courts Decide. Since Ceiling Taken Off Unexpectedly Nobody Knows Whether or Not Such Deal Enforcable. Offer Suggestion You Take Whatever Action Deem Advisable."

A. Right.

Q. Isn't it a fact that on or about December 10th and 11th, 1944, and after Red Lion Packing Company refused to make delivery of ten cars of grapes, the reasonable cash market value of United States No. 1 Emperor grapes was in the neighborhood of \$4.00 per lug? [8]

A. Yes, I would say that is approximately right.

Q. Isn't it a fact that on or about December 9, 1944, Associated Fruit Distributors of California issued a bulletin quoting Emperor grapes at \$4.15 f.o.b. net, f.o.b. acceptance final?

A. We offered those subject to confirmation at a general market at that particular time, yes.

Q. Please explain.

A. Well, we sent out a weekly market bulletin which indicates market trends. It has nothing to do relative to specific quotations and it might apply to prices at which we could buy at a given period from various different packers.

Q. Does that explain it fully? A. Yes.

Q. Isn't it a fact that a bulletin dated Decem-

Plaintiffs' Exhibit No. 5—(Continued)

(Deposition of Raymond M. Crane.)

ber 9, 1944, from Associated Fruit Distributors of California was circulated to the fruit and vegetable trade throughout the country, quoting, among other items, a reasonable market price of \$4.15 f.o.b. net per lug? A. Yes.

Q. Based upon your experience in the fruit and vegetable business, please state what, in your opinion, was the fair reasonable cash market value of United States No. 1 Emperor grapes on or about December 10th and 11th, 1944, and the period between October 3, 1944, and [9] December 10, 1944.

A. That can't be answered by reason of the fact that I think that during the earlier period ceilings were applicable which would have no relative bearing to market judgment or nothing to do in relation to the value of the grapes. However, the market at a later date, in the December that you mentioned, the market was around \$4.00. See what I mean? In other words, you can see that a man uses his business judgment when ceilings are in effect.

Q. The question asks for a "fair reasonable cash market value" between the period I mentioned, and that is the ceiling price of the market, isn't it?

A. When it is on ceiling, for instance, then it is \$3.00.

Q. Then that is the market value, isn't it, if it is the ceiling price?

A. Well, you couldn't tie that in with a man's judgment as to what the value was at that par-

Plaintiffs' Exhibit No. 5—(Continued)

(Deposition of Raymond M. Crane.)

ticular period. There wasn't any question of anybody's judgment. That was the ceiling.

Q. Was that ceiling enforced throughout that period, October 3, 1944, and December 10, 1944?

A. As I recall it was in effect in October but I don't think it was in effect in December.

Q. Isn't it a fact that grapes were scarce [10] and because of the market conditions it was difficult to obtain grapes for replacement of the ten cars on which Red Lion Packing Company repudiated its agreement?

A. I would say grapes were scarce only by reason of the fact that there was a ceiling price existing at that time.

Q. Isn't it a fact that on or about December—

Mr. Wackerbarth: Wait a minute. He hasn't answered whether or not it was difficult to obtain grapes for replacement.

The Witness: No, I don't think it was difficult to obtain grapes for replacement.

Q. (By Mr. Silver): Isn't it a fact that on or about December 11, 1944, Associated Fruit Distributors of California wired, by Western Union, to Jimmie Teel, Fort Worth, Texas, as follows:

“Referring to Our Circular of the 9th Not Sure but Think Owner Willing Confirm 4.00 Emperors Subject Immediate Reply. Offer Subject Packers Confirmation Crossed Saturday Mexicanita Brand No. 2 Mexican Tomatoes 125 6/6 3.50 365 6/7 3.00 7/7 2.50 Duty

Plaintiffs' Exhibit No. 5—(Continued)
(Deposition of Raymond M. Crane.)

Paid Border FOB Acceptance Final Duty
Crossing Extra 61139."

A. Yes.

Q. Isn't it a fact that the agreement to sell the ten cars of grapes confirmed by you to Southwest Brokerage Company, at Dallas, Texas, was made in good faith and in the regular course of business and that you expected Southwest Brokerage Company to rely upon your wire of [11] confirmation?

A. Right.

Q. Isn't it a fact that the ten cars of grapes involved in the transaction with Southwest Brokerage Company and Central Fruit & Vegetable Company and West Texas Produce Company was intended to be shipped in Interstate Commerce?

A. Yes.

Q. Isn't it a fact that the standard lug pack per carload of grapes is 1105 lugs?

A. Not necessarily.

Q. Please explain in detail your answer.

A. The number of lugs consisting of a standard carload depends on ODT regulations, or did at that time, and the size of the car.

Q. Isn't it a fact that the Red Lion Packing Company declined to make delivery of the ten cars of Emperor grapes confirmed by you to Southwest Brokerage Company? A. Yes.

Q. Was the party with whom you negotiated for these grapes and obtained confirmation from Red Lion Packing Company acting in the regular course

Plaintiffs' Exhibit No. 5—(Continued)

(Deposition of Raymond M. Crane.)

of his business and employment for and on behalf of Red Lion Packing Company at the time you obtained confirmation of the sale of the ten cars of United States No. 1 [12] Emperor grapes?

A. As far as I know, yes.

Q. Will you please furnish the Reporter taking your deposition copies of any and all letters and wires you have received or sent to Red Lion Packing Company in connection with the transaction involving the ten cars of United States No. 1 Emperor grapes confirmed by you to Southwest Brokerage Company?

A. Yes.

Mr. Wackerbarth: They are photostats. The originals are probably in Washington.

There are two there, one to Red Lion and the other one from Kanzanjian to Associated Fruit Distributors.

(The witness handed the reporter one photostatic sheet consisting of the two above-mentioned wires.)

Mr. Silver: Mr. Crane, coming back to this question No. 4, the question, referring to your business transactions with Jay Margules and the Red Lion Packing Company in connection with ten cars of United States No. 1 Emperor grapes, the question was: "If you have answered the foregoing question in the affirmative, please state in detail the dealings that you had with this transaction on or about October 2nd and 3rd, 1944, and thereafter."

Plaintiffs' Exhibit No. 5—(Continued)
(Deposition of Raymond M. Crane.)

Will you please state if there are any further dealings that you had with this transaction other than [13] as heretofore has been testified by you?

A. No. I think that this covers all of it in relation to this transaction. There is no other testimony we can add.

Mr. Wackerbarth: It would clarify that a good deal if you would state that you sent out this feeler to a group of some thirteen brokers' houses and it was what initiated the deal. You have beat around the bush but you haven't said how it started.

Q. (By Mr. Silver): Will you explain that?

A. I will state that the Associated Fruit Distributors offered this prospective block of grapes to thirteen of our different brokers or representatives whom we worked with in terminal markets in the regular course of business, and that we subsequently received an order to buy from the Southwest Brokerage Company for the account of West Texas and—who was the other buyer there?

Mr. Wackerbarth: Central Fruit?

The Witness (Continuing): Central Fruit.

I would like to add the telegram sent out to various brokers, known as the one of September 26, 1944, is copied in the report of investigation on this case, dated April 3rd, 1946.

Mr. Silver: Do you want to hand the Reporter the documents you were just describing? [14]

The Witness: Yes, here it is.

Plaintiffs' Exhibit No. 5—(Continued)
(Deposition of Raymond M. Crane.)

(The witness handed the reporter two large photostatic copies of Western Union telegrams.)

Mr. Silver: Mr. Reporter, would you kindly make photostatic copies of these photostats and attach the photostatic copies you obtain to the various copies of the deposition you write up?

Mr. Wackerbarth, do you have any questions either in writing or orally that you wish to propound to Mr. Crane in addition to what I have propounded to him?

Mr. Wackerbarth: There are no questions. Mr. Crane has presented the whole case, as I see it, in answer to your interrogatories, and the answers which he has given to the questions present the defense which Mr. Crane is relying upon, to wit, that he was the procuring agent of the Central Fruit and Vegetable Company and the West Texas Produce Company, and that he was not the agent of the Red Lion Packing Company.

Q. (By Mr. Silver): Has your attorney stated accurately your defense? A. Yes.

Q. Mr. Crane, according to the certificate which was sent to me appointing me as the Commissioner to take your deposition, it is provided in the certificate that this deposition, after being written up, be subscribed by you in my presence. In view of that fact, I will ask [15] you to appear in my office with your attorney as soon as this deposition is

Plaintiffs' Exhibit No. 5—(Continued)
(Deposition of Raymond M. Crane.)

written up and when it is convenient for you to do so for the purpose of having you sign the deposition in my presence.

Is that satisfactory? A. Absolutely.

/s/ RAYMOND M. CRANE,
Witness. [16]

Exhibit No. 1

Western Union

BQ LOSA Night Book, Sept. 26, 1944.

1. Southwest Bkge Co., Dallas Tex.
 2. Jimmie Teel, Fort Worth, Tex.
 3. Apfel and Brooks Co., San Antonio, Tex.
 4. Texas Distributing Co., Houston, Tex.
 5. Eubank Brokerage Co., Waco, Tex.
 6. David M. Slaughter, Laredo, Tex.
 7. A. B. Rains, Jr., Louisville, Ky.
 8. Acme Brokerage Co., Charlotte, N. C.
 9. Pearce, Young, Angel Co., Inc., Spartanburg,
SCar.
 10. McCubbins Brokerage Co., Oklahoma City,
Okla.
 11. Interstate Brokerage Co., Tulsa, Okla.
 12. C. H. Tefft and Son, Charlie Tefft, New
Orleans, La.
 13. H. N. Brown Brokerage Co., Denver, Colo.
- Can Book Emperors Nine Cars USONE Nine
Cars Unclassified or 18 Cars Vineyard-Run Grade

Plaintiffs' Exhibit No. 5—(Continued)

to Go Into Storage Packing to Commence Rate of One or Two Daily October 9th We to Personally Inspect AFOHD^[1] Basis Our Inspection Shipper to Transfer Title on or After December 10th He Paying All Storage Charges. Packed 28# Net Display New Lugs Lidded CalRipe or Comparable Brand 500.00 Part Payment With Confirmation Price 2.53 Net to Shipper Which Ceiling That Time We Charging 50.00 Car Procurement Charge ADLAM^[2] CORLU^[3] Thursday.

ADLAS Immediate UPTMV New Crop Edison District ALBIQ 3.25 Can Secure 3-4 Cars Uninspected Account Running Heavy Puff Heavy Sidewalls Would Grade ALBIEIQ Except for Puff Which Not Serious Defect Account XXX Account Heavy Sidewall 2.50.

ASSOCIATED FRUIT DISTRIBUTORS OF CALIF.

527P

S 13BQ

Exhibit No. 3

Western Union

BQ LOSA SER Book AOXX, Oct. 2, 1944.

1. Southwest Brokerage Co., Dallas, Tex.
2. Jimmie Teel, Fort Worth, Tex.

^[1]FOB acceptance final.

^[2]Offer subconfirmation.

^[3]Wire immediately. Must have answer by.

Plaintiffs' Exhibit No. 5—(Continued)

3. Apfel and Brooks Co., San Antinxx, Antonio, Tex.
 4. Texas Distributing Co., Houston, Tex.
 5. Eubank Brokerage Co., Waco, Tex.
 6. David M. Slaughter, Laredo, Tex.
 7. A. B. Rains, Jr., Louisville, Ky.
 8. Acme Brokerage Co., Charlotte, N. C.
 9. Pearce, Young, Angel Co., Inc., Spartanburg, SCar.
 10. McCubbins Brokerage Co., Okla City, Okla.
 11. Interstate Brokerage Co., Tulsa, Okla.
 12. C. H. Tefft and Son, Charlie Tefft, New Orleans, La.
 13. H. N. Brown Brokerage Co., Denver, Colo.
- CPFGP^[1] Quoting Futures Emperors Secured
 Revised Deal Fifteen Cars USONE 2.50 Net Same
 Deal CORSD^[2] Any Part.

ASSOCIATED FRUIT DIS-
 TRIBUTORS OF CALIF.

910A

S13BQ

T

RBQ1-13 SB 916A TNX

^[1]Reference to our nite letter of 26th.

^[2]Wire quick if wanted.

Plaintiffs' Exhibit No. 5—(Continued)

Exhibit No. 7

Western Union

BQ LOSA LG SER Fruit, Oct. 3, 1944

Red Lyon Packing Co.

Exeter, Calif.

Referring Telephone Have Sold for Your Account Basis 2.50 Lug Net to You Block Emperors Mentioned Five Cars Basis 750.00 Car Deposit Ten Cars Basis 1000.00 Deposit to Be Paid Upon Receipt USONE Government Inspections Now Depending You Handle Through Us Balance Cars You Mentioned for Fresh Shipment Advise When Expect Ship These Believe We Could Place Them Now Ceiling PRICDXXX Price With Deposits Selling Basis Ability Make USONE Grade Suggest Give Us Approximate Shipping Dates Mays Well Get Cleaned Up Since Ceiling Precludes Any Possibility Higher Market Time of Shipment Will Forward Confirmations for Your Signature Soons Receive Airmail From Buyers.

ASSOCIATED FRUIT DISTRIBUTORS OF CALIF.

925A

S2BQ

Plaintiffs' Exhibit No. 5—(Continued)

SL 58 77

Exhibit No. 8

Western Union

Exeter, Calif, Oct. 4, 1944. 11OP

Associated Fruit Distributors

Fifteen Cars Storage U. S. One Emperors December Tenth Conversion Satisfactory at Two Dollars and Fifty Cents FOB Exeter Guaranty by Buyer. One Thousand Dollars Deposit on 10 Cars and Seven Hundred Fifty Dollars on Five Cars Said Deposit to Be Paid Immediately on Inspection at Shipping Point. You to Arrange for Storage as Agreed. Balance of Pack Intend to Load After Oct. Twentieth Will Be Glad to Make Deal on Same About the 15th of Oct.

JOHN C. KAZANJIAN.

150PM

US FOB 10:15 KAZANJIAN

State of California,
County of Los Angeles—ss.

I, Phillip W. Silver, Notary Public in and for the County of Los Angeles, State of California, do hereby certify:

That on the 30th day of October, 1946, before me personally appeared Raymond M. Crane, the witness whose deposition appears hereinbefore.

That the said witness was by me duly advised of the right to make such changes and corrections in

Plaintiffs' Exhibit No. 5—(Continued)

the within transcript as might be necessary in order to render the same true and correct;

That the said witness stated to me that the said deposition had been read to or by him, and he, having made such changes and corrections as he desired thereupon, subscribed and swore to the said deposition in my presence;

In Witness Whereof, I have hereunto subscribed my name and affixed my seal of office the date hereinabove written.

/s/ PHILLIP W. SILVER,

Notary Public in and for the County of Los Angeles, State of California.

Certificate

I, James P. Pino, do hereby certify:

That the foregoing proceedings were taken down by me in stenotypy as given at the time and place herein named and it was thereafter transcribed into typewriting under my direction, and I hereby certify that the foregoing 18 pages comprise a full, true, correct and impartial transcript of my said stenotype notes.

/s/ JAMES P. PINO,

Stenotype Reporter.

Certificate

I, Phillip W. Silver, appointed to take the testimony of Raymond M. Crane whose name is subscribed to the attached deposition, hereby certify

Plaintiffs' Exhibit No. 5—(Continued)

that on the 10th day of September, 1946, at the place and date specified in said order the said Raymond M. Crane was first sworn by me to testify to the truth in relation to the matters in controversy between the said Central Fruit & Vegetable Co. & West Texas Produce Company complainant, and the said Associated Fruit Distributors of Calif., and Red Lion Packing Co., respondent; that the testimony of said witness was reduced to writing and was thereafter subscribed by the said Raymond M. Crane in my presence.

In testimony whereof I have hereunto set my hand and seal this 30th day of Oct., 1946.

[Seal] /s/ PHILLIP W. SILVER,
Notary Public.

JAY MARGULES

the said witness, being duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth in answer to the direct interrogatories as hereinafter indicated, deposes and says as follows:

Direct Interrogatories

Q. Please state your name, business and address?

A. Jay Margules; 202 Producers Exchange Building; fruit and vegetable broker.

Q. Are you licensed by the Department of Agriculture, and if so, please give your license number?

A. Yes, 50847.

Plaintiffs' Exhibit No. 5—(Continued)

(Deposition of Jay Margules.)

Q. Please describe the nature of the operations of your business and the number of years of experience you have had in the same?

A. I sell carloads of fruit and vegetables and have had approximately twenty years experience.

Q. Have you had business dealings with the Complainants, Central Fruit & Vegetable Company and West Texas Produce Company, and if so, over what period of years?

A. Yes, for at least twelve to fifteen years.

Q. Have you had business transactions prior to October 3, 1944, with Associated Fruit Distributors of California and Red Lion Packing Company?

A. I have had business transactions with the Associated Fruit Distributors prior to October 3rd, 1944, but not the Red Lion Packing Company.

Q. Are you acquainted with the Respondents, Associated Fruit Distributors of California and Red Lion Packing Company, and if you are, please state with whom you have had business transactions and over what period of time, and whether the same included the period about October 3rd, 1944?

A. I am acquainted with Respondent, Associated Fruit Distributors but not the Red Lion Packing Company, and most of my transactions took place with Mr. Ray Crane over a period of possibly three or four years. This including the period about October 3rd, 1944.

Q. Please state whether or not you had any transactions with the Complainants, Central Fruit

Plaintiffs' Exhibit No. 5—(Continued)

(Deposition of Jay Margules.)

& Vegetable Company and West Texas Produce Company, and Respondents, Associated Fruit Distributors of California and Red Lion Packing Company, in connection with the sale and purchase on or about October 3, 1944, of ten (10) cars of United States No. 1 Emperor grapes, 28 pounds net per lug, grade to be evidenced by grade inspection at the agreed price of \$2.50 per lug, f.o.b. shipping point, plus 3½c per lug brokerage to be paid to you, plus \$50.00 per car buying service.

A. Yes, with the exception of the Red Lion Packing Company. My dealings were with Mr. Crane of the Associated Fruit Distributors. He confirmed the ten cars of grapes in question by Western Union Telegram at the agreed price of \$2.50 per lug F.O.B. shipping point plus \$50 per car buying service for his firm plus three and one-half cents per lug brokerage for myself to be paid by the buyers.

Q. If you have answered the foregoing interrogatory in the affirmative, please state in detail the dealings that you handled personally in connection with the aforementioned transaction, furnishing to the Reporter taking your deposition copies of any telegrams, letters or instruments you received from either the Complainants or Respondents, or any that you sent to the Complainants and Respondents?

A. On or about October 1st or 2nd, 1944, Associated Fruit Distributors wired us that could book

Plaintiffs' Exhibit No. 5—(Continued)

(Deposition of Jay Margules.)

some Emperor Grapes which were rather scarce at that time and we eventually sold ten cars at \$2.50 per lug F.O.B. shipping point plus \$50 buying service for Associated Fruit Distributors plus three and one-half cents per lug brokerage to be paid us by the buyers. Six of these cars were to go to the West Texas Produce Company, Fort Worth, and four to the Central Fruit & Vegetable Company at Dallas. All particulars of the shipper's specifications were met at the time and written confirmation issued to both buyers and the seller. On October 10th, 1944, we heard that the ceiling on grapes had been lifted, and we wired Associated asking if he could ship some of these cars right away instead of putting them all in storage. He replied that the owner, Red Lion Packing Company took the view that "Account ceiling lifted, any contracts Emperor voided; willing go along; give you trade preference shipping as packed at market price which today \$3.25 F.O.B. acceptance. Advise." This was seventy-five cents per lug higher than the cars were originally sold and confirmed.

We then contacted Mr. T. C. Curry, Principal Marketing Specialist of the Department of Agriculture at Washington, D. C., giving the facts in the case as best we could by wire, and he replied on October 11th that, "Based on facts presented would appear California shipper obligated delivery ten cars Emperor, \$2.50 F.O.B. Don't see where lift-

Plaintiffs' Exhibit No. 5—(Continued)

(Deposition of Jay Margules.)

ing OPA ceiling has any effect on contract of this kind."

After contacting West Texas Produce and Central Fruit & Vegetable Company we wired the Associated Fruit Distributors that the buyers wanted their grapes as bought and confirmed and would hold them and the Red Lion Packing Company liable for damages if they did not deliver the grapes per contract.

Mr. Crane requested me to call him on the telephone, which I did, but about all he told me on the telephone was that the Red Lion Packing Company would not go through with the deal any other way except by billing the cars at market price, and that the Red Lion Packing Company felt they were doing the buyers a favor to sell them even on that basis.

On October 12th, 1944, Associated Fruit Distributors wired me that the Red Lion Packing Company had made a final gesture and would ship these grapes basis \$3.00 F.O.B., stating that "Quality is nice, uninspected, field run, but Red Lion states probable grade U. S. No. 1 arrival but not willing make this guarantee." We had originally bought these grapes on the basis of U. S. No. 1 grade. We then wired the Red Lion Packing Company direct on October 13th, 1944, stating that their offer through the Associated to deliver these grapes for \$3.00 F.O.B. was unacceptable and the buyers wanted the contract fulfilled as confirmed.

Plaintiffs' Exhibit No. 5—(Continued)
(Deposition of Jay Margules.)

On October 16th, we received a wire from Associated that the Red Lion Packing Company definitely was unwilling to abide by the terms of the original contract and suggesting that we take whatever action we felt advisable.

I sent the original papers relating to this transaction, to the best of my recollection, to Mr. T. C. Curry of the Department of Agriculture, Washington, D. C.; instead of attaching copies of all letters, telegrams, instruments, and so forth, I refer to Exhibits 12, 13, 13-A, 13-B, 13-C, 13-D, 13-E, 13-F, 13-G, 13-H, 13-I, 13-J, 13-K, 13-L, 13-M, 13-N, 13-O, 13-P, 13-Q, and 13-R attached to the report of the investigation before the Secretary of Agriculture pertaining to this matter made by T. C. Curry in charge Regulatory Division Fruit & Vegetable Branch, and say that the photostatic copies of the said exhibits are true and correct, and refer to them as part of my answer.

I do attach a photostatic copy of my confirmation memorandum of sale to West Texas Produce Company, Fort Worth; Central Fruit & Produce, Dallas, which is the same as Central Fruit & Vegetable Company. This copy is being marked for identification by the reporter as Exhibit "A."

Q. Please state the capacity in which you participated in the transaction involving the aforementioned ten (10) cars of United States No. 1 Emperor grapes?

A. I represented The Associated Fruit Distrib-

Plaintiffs' Exhibit No. 5—(Continued)
(Deposition of Jay Margules.)

utors in this transaction in the regular course of my business as a broker, but the agreement was that my compensation was to come from the buyer, together with \$50 buying service for Associated Fruit Distributors.

Q. Please state whether or not such grapes were to be sold, delivered and handled in Interstate Commerce, that is, from passing through one state to another? A. Yes.

Q. Please state whether or not you received any wires from the Respondent, Associated Fruit Distributors of California, with reference to the sale of the aforementioned grapes?

A. Yes, a wire confirming the sale on the terms that I made to Central Fruit & Vegetable, and the West Texas Produce Company, and the other wires referred to in my answer to question 8.

Q. Please state whether or not you confirmed in writing the sale of the aforementioned grapes to the Complainants, Central Fruit and Vegetable Company and West Texas Produce Company?

A. Yes. I issued a written confirmation of sale to both buyers and the Associated Fruit Distributors.

Q. If you have answered the foregoing in the affirmative, please furnish the Reporter a copy of such confirmation and state whether the same is an exact copy?

A. I have already done so in answer to question 8. It is marked Exhibit "A."

Plaintiffs' Exhibit No. 5—(Continued)

(Deposition of Jay Margules.)

Q. I show you a photostatic copy of a letter dated February 21, 1946, which I will ask the Reporter to identify as Plaintiff's Exhibit No. 1, addressed to Mr. T. C. Curry, Principal Marketing Specialist, Washington, D. C., on the stationery of Southwest Brokerage Company, signed "Southwest Brokerage Company J. Margules," and ask you to state whether or not that is a correct and true photostatic copy of the original of the letter that you wrote Mr. Curry, and if the same correctly discloses your participation in the transaction and whether or not all of the facts therein contained are true and correct?

A. Yes, Exhibit No. 1 displayed to me by the reporter. This is a true and correct photostatic copy of the original of the letter which I wrote to Mr. Curry, and to the best of my knowledge discloses fully my participation in the transaction and, to the best of my knowledge, all the facts contained therein are true and correct.

Q. Did you have any telephone conversations with anyone connected with the Associated Fruit Distributors of California, and if so, please state with whom, the approximate time, and what you said and what the Associated Fruit Distributors of California representative said. If you have any written memoranda of such conversations, please state if you made the same and furnish the Reporter with two copies thereof?

A. Yes. I had a telephone conversation with

Plaintiffs' Exhibit No. 5—(Continued)

(Deposition of Jay Margules.)

Ray Crane of the Associated Fruit Distributors on or about October 11th, 1944, at which time he stated the Red Lion Packing Company definitely would not go through with the deal any other way except at market price, and, to the best of my knowledge, I talked to Mr. Ray Crane on or about October 2nd, 1944, wherein the deal for the ten cars was consummated and at that time he stated he would follow up with a wire consummation. This wire consummation was later received and is referred to among the exhibits. I do not have any written memorandum of such conversation.

Q. Please state whether or not the letter you wrote to Mr. T. C. Curry on February 21, 1946, was in response to a request for such information from Mr. Curry and was in the regular course of business and in transactions with the Department of Agriculture?

A. Yes. A letter written to Mr. Curry on February 21st, 1946, was in response to his request for said information.

Q. State whether or not you received from the Associated Fruit Distributors of California a Western Union Telegraph Company wire confirming the ten (10) cars of grapes in question on or about October 22, 1944?

A. Yes. I did receive a Western Union Wire confirming the ten cars of grapes in question, but the date was on or about October 2nd, 1944.

Q. If you have answered the foregoing inter-

Plaintiffs' Exhibit No. 5—(Continued)

(Deposition of Jay Margules.)

rogatory in the affirmative, will you please deliver to the Reporter, to be marked for identification as Exhibit No. 2, a true and correct copy of such wire?

A. I deliver to you a photostatic copy of the wire referred to which you will please mark as Exhibit No. 2 and I certify this to be a true and correct copy of said wire.

Q. I show you a standard Memorandum of Sale, dated October 3, 1944, to West Texas Produce Company and Central Fruit & Produce, which I will ask the Reporter to identify as Exhibit No. 3, and ask you to state whether or not that is a true and correct photostatic copy of the Memorandum of Sale that you delivered to the Complainants?

A. I have already covered this in previous question 8 and it is a true and correct copy.

Q. State whether or not that is your signature on the aforementioned memorandum of sale?

A. Yes. This is my signature.

Q. At the time you delivered said Memorandum of Sale, above referred to, had you been authorized to so do by Associated Fruit Distributors, and if so, state how and when?

A. Yes, by the wire confirming the sale.

Q. Was the Memorandum of Sale delivered to the Complainants over your signature in your usual course of business and dealings as a broker?

A. Yes.

Plaintiffs' Exhibit No. 5—(Continued)

(Deposition of Jay Margules.)

Q. Had you had previous dealings with the Associated Fruit Distributors and was the manner in which you handled this transaction the usual and customary manner of your dealings with the Associated Fruit Distributors and the Complainants?

A. Yes.

Q. To your knowledge, have the Complainants been ready, willing and able to comply with the agreement to purchase the ten (10) cars of United States No. 1 Emperor grapes at the price contracted for?

A. Yes.

Q. To your knowledge, have the Respondents complied with the agreement and made delivery of the grapes in question?

A. No.

Q. To your knowledge, have the Complainants and you, in behalf of the company, attempted to minimize the damage and purchase ten (10) cars of United States No. 1 Emperor Grapes to replace the grapes not delivered by the Respondents?

A. Yes.

Q. Isn't it a fact that the market on grapes was scarce and no confirmations could be obtained by you for ten cars of grapes of the kind and character contracted for?

A. Yes.

Q. Please state the efforts you have made to locate and obtain the purchase of ten cars of grapes after receiving notice that the Respondents declined to comply with the agreement and sale?

A. I wired other shippers whom I knew to be

Plaintiffs' Exhibit No. 5—(Continued)

(Deposition of Jay Margules.)

handling grapes, but to the best of my recollection, I could not secure any.

Q. I show you a photostatic copy of a bulletin from the Associated Fruit Distributors of California dated December 9, 1944, and ask you whether or not you received a mimeographed bulletin of like character, quoting United States No. 1 grapes at \$4.15 f.o.b. net?

A. Yes. I did receive the bulletin referred to which I hand to the Notary to be marked as Exhibit 3.

Q. Please deliver to the Reporter taking this deposition all correspondence and telegrams that you have in connection with the transaction concerning the ten cars of United States No. 1 grapes sold to the Complainants herein.

A. For answer to this question I refer to the exhibits mentioned in my answer to question No. 8.

Q. From your experience in the fruit and vegetable business, please state what the fair, reasonable cash market value of United States No. 1 Emperor grapes of the type and kind contracted for with the Complainants, was on or about December 10, 1944; and the period between October 3, 1944, and December 10, 1944, and for a reasonable period after December 10, 1944.

A. On or about December 10th, 1944, the fair and reasonable fair cash market value of U. S. No. 1 Emperor Grapes was around \$4.00 to \$4.25 F.O.B. shipping point. Between October 3rd,

Plaintiffs' Exhibit No. 5—(Continued)

(Deposition of Jay Margules.)

1944, and December 10th, 1944, to the best of my recollection, the market ranged from \$3.25 to \$4.25 F. O. B., and for a reasonable period after December 10th, 1944, if the grapes were available they were worth not less than \$4.25 F.O.B. or U. S. No. 1 of the type and kind contracted for with the complainants.

Q. State whether or not you purchased for Complainants any United States No. 1 Emperor grapes of the type and kind contracted for with the Complainants, for the Complainants, between October 3, 1944, and February 1, 1945. If so, please give all details, amount purchased, and price paid for the same.

A. To the best of my recollection I did purchase one car from Heggblade-Margules at San Francisco, California, for the Central Fruit & Vegetable Company at a much higher price than the ten cars were originally bought. To the best of my recollection this car which I bought for Central Fruit & Vegetable Company was at a cost of around \$3.75 F.O.B. on October 24th, 1944.

Q. To your knowledge, have Complainants made diligent effort to find, locate and purchase ten cars of United States No. 1 Emperor grapes for delivery on or about December 10, 1944, to replace the grapes not delivered by the Respondents?

A. Yes.

Q. State whether or not any agreement was made by you with Complainants or Respondents

Plaintiffs' Exhibit No. 5—(Continued)

(Deposition of Jay Margules.)

that lifting of O.P.A. ceiling prices would void contract for the ten cars of United States No. 1 Emperor grapes. A. No.

Q. I hand you copy of telegram addressed to Southwest Brokerage Company from T. C. Curry, War Food Administrator, which I will ask the Reporter to identify as Exhibit 4, and ask you whether or not this is a true and correct copy of the telegram which you received from Mr. Curry?

A. I hand you copy of telegram referred to and state that this is a true and correct copy of the telegram which I received from Mr. Curry, which is marked Exhibit 4.

Q. I hand you copy of telegram addressed to Southwest Brokerage Company from Associated Fruit Distributors of California, which I will ask the Reporter to identify as Complainant's Exhibit No. 5, and ask you whether or not this is a true and correct copy of a telegram you received from Associated Fruit Distributors of California?

A. I hand you copy of telegram addressed to me from the Associated Fruit Distributors and state that this is a true and correct copy of said telegram which you will mark as Exhibit No. 5.

Q. I hand you fourteen (14) copies of telegrams, which I will ask the Reporter to identify as Complainants' Exhibits Nos. 6 through 19, and ask you whether or not these are true and correct copies of telegrams you received and sent in connection with the transaction involving the ten cars

Plaintiffs' Exhibit No. 5—(Continued)
(Deposition of Jay Margules.)
of United States No. 1 Emperor grapes confirmed
to the Complainants herein?

A. Yes, said exhibits being marked 6 to and including 19.

Q. It is a fact, is it not, that Dallas, Texas, is more than 100 miles from Los Angeles, California?

A. Yes.

Q. Were you willing at your own expense to go to Los Angeles, California to testify in this cause?

A. I would not have liked to go.

[Interrogatories submitted by]:

/s/ J. MANUEL HOPPENSTEIN,
Attorney for Complainants.

[Answers to Interrogatories by]:

/s/ JAY MARGULES.

Subscribed and sworn to before me by the said witness, Jay Margules, on this the 8th day of Oct., 1946.

[Seal] /s/ L. W. McCREIGHT,
Notary Public in and for
Dallas County, Texas.

Plaintiffs' Exhibit No. 5—(Continued)

Exhibit No. 1

Southwest Brokerage Co.
Fruit and Vegetable Division
Room 202 Produce Exchange Building
2103 1-2 Cadiz Street
Dallas, Texas

February 21, 1946.

Mr. T. C. Curry
Principal Marketing Specialist
Washington, D. C.
PACA D-2468

Dear Sir:

Referring yours of February 8th we are enclosing herewith all the papers in our file with regard to this deal. When they have served your purpose please return them to us.

To the best of our recollection, the following is a true and complete statement of the facts as known to us: Associated wired us they could book some Emperors, which were rather scarce at that time, and we eventually sold 10 cars at \$2.50 per lug to West Texas Produce Company, Fort Worth, and the Central Fruit at Dallas, the former to get 6 cars and the latter to get four cars. All particulars of the shipper's specifications were met at the time and confirmation issued to both buyers and seller, copy of which is attached. On October 10th, 1944, we heard the grape ceiling had been lifted and we wired the shipper asking if he could ship some of these cars right away instead of putting them all in

Plaintiffs' Exhibit No. 5—(Continued)

storage. He replied that the owner (Red Lyon Packing Co.) took the view that "account ceiling lifted any contracts emperors voided willing go along give your trade preference shipping as packed at market price which today 3.25 f.o.b. acceptance advise." This was 75c per lug higher than the cars were originally bought.

We then contacted you and presented the facts as best we could by wire and you replied on October 11th that "based on facts presented would appear California shipper obligated delivered 10 cars emperors 2.50 f.o.b. don't see where lifting OPA ceiling has any effect on contract this kind." After contacting our buyers we wired Associated that the buyers wanted their grapes as bought and would hold him and the owner liable if not delivered. He requested me to call him, which I did, talking to Ray Crane, owner or manager of Associated and about all he told me on the phone was that the owner would not go thru with the deal any other way except market price, and felt he was doing the buyers a favor to sell them even on that basis. On October 12th, 1944, Associated wired that the owner had made a final gesture and would sell basis \$3.00 f.o.b., "quality is nice uninspected field run but Red Lyon states probably grade U.S. No. 1 arrival but not willing make this guarantee." We had originally bought U. S. No. 1. We then wired Red Lyon on October 13th, 1944, that the offer of \$3.00 f.o.b. was unacceptable and buyers wanted contract fulfilled as confirmed. On October 16th we received a wire from Associated that Red Lyon definitely

Plaintiffs' Exhibit No. 5—(Continued)

was unwilling to abide by the original deal, suggesting we take whatever action we felt advisable.

I have had many years experience in the brokerage business and during the period involved was qualified to know the reasonable fair cash market value of the type of grapes involved in the transaction. I know that at the time required by the contract for the delivery of the grapes to the purchasers and after they discovered that the shipper would not deliver, that the purchasers made bona fide efforts to purchase ten cars of Emperor U. S. No. 1, but were unable to obtain offers of sale for such a quantity, but that they did purchase several cars. Based upon my experience in the fruit and vegetable business and inquiries made of the trade, it is my opinion that the fair cash reasonable market value of the type of grapes involved in the transaction on or about December 10, 1944, was \$4.00 per lug. The grapes sold to the purchasers were sold at a specified amount of \$2.50 f.o.b. plus \$50.00 buying service, plus our brokerage of 3c per lug.

In any claim for damages our brokerage of 3c per lug or \$33.15 per car should be included, as due to failure to ship we were obliged to lose this sum, as naturally the buyers would not pay us brokerage when the cars were not received.

Yours very truly,

**SOUTHWEST BROKERAGE
COMPANY,**

/s/ **JAY MARGULES.**

Plaintiffs' Exhibit No. 5—(Continued)

Exhibit No. 4

Western Union Telegraph Co.

(Copy)

TTLA05D.WA46 Collect IL-WUX Washington,
D. C., 940A

Southwest Brokerage Co.—Fruit and Vegetable
Divn, 2103½ Cadiz St., Dal.

Retel Based on Facts Presented Would Ap-
pear California Shipper Obligated Deliver Ten Em-
perors 2.50 FOB. Don't See Where Lifting OPA
Ceiling Has Any Effect on Contract This Kind. If
Can Assist Further Advise.

T. C. CURRY,

War Food Admin.

R TLA05 SK.

Exhibit No. 7

Western Union Telegraph Co.

(Copy)

TTLA77D. SB41 22 Ser-Wux Los Angeles, Calif.,
3 1016A

Southwest Brokerage Co., Dal.

Did You Sell Entire Ten Cars Emperors? Corey
Others waiting. Do Aflep Tomatoes 30906? First

Plaintiffs' Exhibit No. 5—(Continued)

Car Arrived Kaysee Today Reported Beautiful Quality.

ASSOCIATED FRUIT DIS-
TRIBUTORS OF CALIF.

Aflep 30906. (23).

.....

Western Union Telegraph Co.

(Copy)

SK 4 Ser 10/3/44 Associated Fruit Dist.
Los Angeles, Calif.

What Are U Talking About? We Ordered and
U Already Confirmed by Wire 10 Cars Emperors
Advise. Unarrived Toms 30906 Sell Elsewhere if
U Desire.

SOUTH WEST BRKG. CO.
Frt. & Veg. Divn.

Exhibit No. 9

Western Union

(Copy of Teletype Message)

Rdy With LA Announce Pls Assoc Fruit Distrs LA
GA SW at Dallas.

Refg That 6 Emps FTW and 4 Dallas Deal OK
2.50 Net 50.00 for U if Legal. Presume Its Legal
of U Wouldn't Offer It. Advise GA Havnt Bn
Able Contact the Shpr Yet but Sure Its Okay. Wl
Wire U Def One Way or Other Soons Get Him.
Yes It Is Legal Naturally a Receiver Can Pay His

Plaintiffs' Exhibit No. 5—(Continued)

Whole Markup for Buying Brokg if He Wants to
Wl Wire U Soons Rec Def Conf. Undstnd Its Basis
1000.00 Dep Against Each US One Inspn as They
R Loaded. What Else New GA.

Fars I kno That Covers It. Try Wire Nite Sure
Thx End. OK End.

Exhibit No. 10

Western Union Telegraph Co.

(Copy)

DH140 NL PD-WUX Los Angeles, Calif., Oct. 12.
Southwest Brok. Co., Dal.

As Fnal Gesture and Endeavoring to Amicably
Settle Grape Contract Red Lion Packing Company
Willing Sell Basis 3.00 Net FOB Quantities Spec-
ified on Contract Buyer to Pay Us .10 Pkge Pro-
curement Quality Is Nice Uninspected Field Run
but Red Lion States in All Probability Fruit Easily
Grade US One Arrival but Not Willing Make This
Guarantee Our Inspector Has Seen Fruit Says
Really Beautiful If Buyers Wish We Will Ar-
range to Put Cars Storage Which We Have Al-
ready Under Contract Otherwise Red Lion Takes
Attitude That After All He Had Nothing to Do
With Ceiling Feels He Relieved All Moral Respon-
sibility by Making This Offer Claims Turning Down
Offers His Entire Outfit Today Basis 3.40 Cash
FOB.

ASSOCIATED FRUIT DIS-
TRIBUTORS OF CALIF.

Plaintiffs' Exhibit No. 5—(Continued)

Exhibit No. 11

Western Union Telegraph Co.

(Copy)

SK 11 NL 10/13/44 John Kanzajian, Red Lyon
Pkg. Co.

Exeter, Calif.

Re Ten Cars Emperors Confirmed by You Thru
Associated for West Texas Produce and Central
Fruit, We Wiring Associated Tonite Offer of 3.00
FOB Plus 10c Procurement Charge Unacceptable
and Buyers Want Contract Fulfilled as Confirmed.
If Not Going Thru on This Basis Please So Advise
Immediately by Wire as Buyers Desire Take Action
Protect Their Interests. Personally Dont See How
Lifting Ceiling Has Anything to Do With Con-
tract Which Was Made at Definite Price and Wash-
ington Has Wired Us to This Effect Also. Advise
Promptly Direct or Thru Associated Thanks.

SOUTHWEST BROKERAGE
CO.,
Frt. & Veg. Divn.

Plaintiffs' Exhibit No. 5—(Continued)

Exhibit No. 12

Western Union Telegraph Co.

(Copy)

GDH125 13 SER-WUX Los Angeles, Calif., 11
501P

Southwest Brokerage Co., Dal.

Please Call Us Collect 10 AM Our Time Tomorrow
Tucker 3839 Regarding Emperor Deal.

ASSOCIATED FRUIT DIS-
TRIBUTORS OF CALIF.

3839

Exhibit No. 13

Western Union Telegraph Co.

SK 2 NL 10/12/44 Associated Fruit Dist., Los Angeles,
Calif.

Re Phone West Texas and Central Do Not Admit
Lifting Ceiling Voids Contract and Curry Has Con-
curred in This as Price Was Definite Per Wires.
Therefore Buyers Intend Hold Urselves and Red
Lyon for Failure to Deliver if Grapes Not Shipped
Per Contract and We of Course Have to Go Against
Somebody for Our Brokerage. Personally Dont
See How They Can Get Out of This Deal and
Think Advisable They Ship as Contracted or Offer
Some Reasonable Adjustment for Buyers Approval.

SOUTHWEST BROKERAGE
CO.,

Frt. & Veg. Divn.

Plaintiffs' Exhibit No. 5—(Continued)

Exhibit No. 14

Western Union Telegraph Co.

(Copy)

SK 10 NL 10/13/44 Associated Fruit Distributors,
Los Angeles, Calif.

Tomatoes Really Shot 1.25 to 2.00 Delivered Un-
arrived Fars I know 18378 but Really Believe U
Do Better Elsewhere. Will AFLEP if Any Re-
ceived 18378. Regarding 10 Car Emperor Deal
West Texas and Central Say Offer Per Ur Wire
Unacceptable Want Definite Yes or No by Tomor-
row if Contract Not Going to Be Filled by Re-
sponsible Party so Can Take Whatever Action
They Deem Proper.

SOUTHWEST BRKG. CO.,

Frt. & Veg. Divn.

Exhibit No. 15

Western Union Telegraph Co.

(Copy)

TTLA05D. WA46 Collect DL-WUX Washington,
D. C. 11 940A.

Southwest Brokerage Co., Fruit and Vegetable
Divn. 2103 1/2 Cadiz St., Dal.

Retel Based on Facts Presented Would Appear
California Shipper Obligated Deliver Ten Em-
perors 2.50 FOB Dont See Where Lifting OPA

Plaintiffs' Exhibit No. 5—(Continued)

Ceiling Has Any Effect on Contract This Kind. If
Can Assist Further Advise.

T. C. CURRY,

War Food Admin.

R TLA05 SK.

Exhibit No. 16

Western Union Telegraph Co.

(Copy)

71 OCTVWRTP Southwest Brokerage Co.

Contacting Grower Toht DV Stand CCRIH Em-
perors.

ASSOCIATED FRUIT DIS-
TRIBUTORS OF CALIF.

326P

.....
Western Union Telegraph Co.

(Copy)

SK 1 DL 10/11/44 Associated Fruit Dist of Calif.

Los Angeles, Calif.

Answering Curry, War Food Administration,
Says Lifting OPA Ceiling Has Not Effect on This
Contract. Better Advise Red Lion Accordingly
Today Get Definite Answer Yes or No Whether
Going Ship Per Contract Now or Later So Buyer
Also Ourselves Know How to Handle Advise.

SOUTHWEST BRKG. CO.,

Frt. & Veg. Divn.

RIDN 940A.

Plaintiffs' Exhibit No. 5—(Continued)

Exhibit No. 17

Western Union Telegraph Co.

(Copy)

DG131 LG SER PD WUX Los Angeles, Calif. 10
354P

Southwest Brokerage Co.

Shipper Redlion Takes View Account Ceiling
Lifted Any Contracts Emperors Voided Willing Go
Along Give Your Trade Preference Shipping as
Packed at Market Price Which Today 3.25 AFOHD
Advise.

ASSOCIATED FRUIT DIS-
TRIBUTORS OF CALIF.

.....

Western Union Telegraph Co.

(Copy)

SK 1 DL 10/10/44 Associated Fruit Dist of Calif.
Los Angeles, Calif.

Understand Ceiling Lifted Table Grapes, Whats
to Prevent Shipping Some These Ten Cars In-
stead Putting All in Storage Advise. Re Toma-
toes Twos Aceankist Biltmore Sold Track 2.00 De-
livered Various Shippers Rolling Sale Arrival. Will
AFLEP Anything Which Arrives Here.

SOUTHWEST BRKG. CO.,
Frt. & Veg. Divn.

Plaintiffs' Exhibit No. 5—(Continued)

Exhibit No. 18

Western Union Telegraph Co.

(Copy)

DS 62 NL PD Oct 10 710P

J. W. Curry, War Food Administration Regulatory
Divn, Wash., D. C.

Contract Made Ten Days Ago With California
Shipper as Agent for Another Party for Ten Cars
Emperor Grapes at 2.50 FOB Packing Starting
October 10th Shipment From Storage California
Starting December 9th Table Grape Regulation
Lifted Today Shipper States Other Party Consid-
ers Contract Void Willing to Ship Basis Now 3.25
FOB Appreciate Advise Your Ideas Morning as to
Status of Contract.

SOUTHWEST BROKERAGE
CO.,

Fruit & Vegetable Divn.

Chg Acct SG 202 Produce Exchange Bldg.

Exhibit No. 19

Western Union Telegraph Co.

(Copy)

TLA24D. SB113 LG PD SER-WUX Los An-
geles, Calif. 16 1147A

Southwest Brok. Co., Dal.

Again Talked Redlion They State Definitely Un-
willing Abide Any Sales Made Where Ceiling Defi-

Plaintiffs' Exhibit No. 5—(Continued)

nite Consideration Furthermore Crop Short Not
Packing US One Grade Duquk Case for Courts
Decide Since Ceiling Taken Off Unexpectedly No-
body Knows Whether or Not Such Deal Enforce-
able Offer Suggestion You Take Whatever Action
Deem Advisable.

ASSD. FRUIT DISTR. OF
CALIF.

R TLA24 SK

Certificate

I, L. W. McCreight, appointed to take the testi-
mony of Jay Margules, whose name is subscribed
to the attached deposition, hereby certify that on
the 21st day of August, 1946, at the place and date
specified in said order the said Jay Margules was
first sworn by me to testify to the truth in relation
to the matters in controversy between the said Cen-
tral Fruit & Vegetable Company, and West Texas
Produce Company, Complainants, and the said As-
sociated Fruit Distributors of California, and Red
Lion Packing Company, Respondents; that the testi-
mony of said witness was reduced to writing and
was thereafter subscribed by the said Jay Mar-
gules in my presence.

In testimony whereof I have hereunto set my
hand and seal this 8th day of Oct., 1946.

[Seal] /s/ L. W. McCREIGHT,
Notary Public in and for
Dallas County, Texas.

Received in evidence July 11, 1950.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 237, inclusive, contain the original Notice of Appeal from Reparation Order of Secretary of Agriculture; Petition Setting Forth Proceedings Before the Secretary of Agriculture, etc.; Certified Record from the Secretary of Agriculture; Amended Answer of Respondent and Appellee Raymond M. Crane, etc.; Trial Brief Presented on Behalf of Raymond M. Crane, etc.; Complainants' Pretrial Memorandum Under Rule 12; Trial Brief of John Kazanjian, etc.; Objections of Complainants to Proposed Findings of Fact and Conclusions of Law, etc.; Findings of Fact and Conclusions of Law; Judgment; Motion for New Trial with Supporting Affidavits; Notice of Motion to Set Motion for New Trial and to Grant Oral Arguments Thereon; Notice of Appeal; Undertaking for Costs on Appeal; Statement of Points Intended to Be Relied Upon on Appeal and Designation of Record on Appeal and a full, true and correct copy of Minute Orders Entered November 6, 1950, and January 16, 1951, which, together with original plaintiffs' exhibits 1 to 6, inclusive, original defendants' exhibits A to M, inclusive, and copy of Reporter's Transcript of Proceedings on July 11, 12, and 13, 1950, and November 6, 1950, transmitted herewith, constitute the record on appeal to the

United States Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing and certifying the foregoing record amount to \$3.20 which sum has been paid to me by appellants.

Witness my hand and the seal of said District Court this 21st day of March, A.D. 1951.

EDMUND L. SMITH,
Clerk.

[Seal] By /s/ THEODORE HOCKE,
Chief Deputy.

[Endorsed]: No. 12884. United States Court of Appeals for the Ninth Circuit. Central Fruit & Vegetable Co., and West Texas Produce Company, Appellants, vs. Associated Fruit Distributors of California, Raymond M. Crane, Red Lion Packing Company and John C. Kazanjian, Appellees. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed March 26, 1951.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

CENTRAL FRUIT AND VEGETABLE CO.
and WEST TEXAS PRODUCE COMPANY,
Appellants,

vs.

ASSOCIATED FRUIT DISTRIBUTORS OF
CALIFORNIA and RED LION PACKING
COMPANY,

Appellees.

STATEMENT OF POINTS ON WHICH
APPELLANTS INTEND TO RELY

Appellants adopt as their statement of points on which they intend to rely under Rule 19 (6) the statement of points filed in the District Court on February 27, 1951.

J. MANUEL HOPPENSTEIN,
and

HARRY A. PINES,

By /s/ HARRY A. PINES,
Attorneys for Central Fruit and Vegetable Co. and
West Texas Produce Company, Appellants.

Affidavit of Service by Mail attached.

[Endorsed]: Filed March 27, 1951.